LEGAL EDUCATION IN SRI LANKA

The dual system of legal education

There are two institutions which are responsible for legal education in Sri Lanka. The Faculty of Law of the University of Sri Lanka which was established in 1948 provides courses leading to the degree of Bachelor of Laws (LL.B.) and research degrees on the basis of a dissertation (LL.M. and Ph.D.). A university degree however, does not entitle the holder to practise. The Sri Lanka Law College which came into existence as the Ceylon Law College in 1911 is responsible for providing courses and holds qualifying examinations for those who wish to enter the profession. The Law College functions under the control and direction of the Council of Legal Education which was established in 1874. But the origins of professional legal education in Sri Lanka date back to the early years of the British rule which commenced in 1796. It is not proposed in this article to trace the origins of legal education. But in attempting to outline the system of legal education as it exists today it is necessary to make some reference to the origin and growth of the institutions responsible for legal education.

Professional legal education [1]

The foundation of the present system of professional legal education was laid during the period of British rule. The Charter of Justice of 1801,[2] authorised the Supreme Court to admit and enrol as advocates and proctors "persons of good repute and of competent knowledge and ability", and to make rules regulating their admission. This provision has been re-enacted in successive Charters and legislative enactments. Section 33 of the Administration of Justice Law[3] enacts, "The Supreme Court may admit and enrol as Attorneys-at-Law persons of good repute and of competent knowledge and ability". The Administration of Justice Law effected a fusion of the legal profession which hitherto had been divided into two branches — Advocates and Proctors, a bifurcation which corresponded to the English distinction between Barristers and Solicitors.

In the early years from 1801 onwards the Supreme Court directly exercised the power referred to above to admit persons to the legal profession. Applicants were required to serve a period of apprenticeship and to pass examinations set by a judge or judges of the Supreme Court. In 1858 the judges delegated their functions as examiners to a body of examiners consisting of the Queen's Advocate and his

[1] The author has relied on a chapter written by R.K.W. Goonesekere, *History of Education in Ceylon,* Part 3 (1967) Government Publications Bureau, Colombo, p. 684 for information regarding the early history of professional legal education.

[2] Charter of Justice of 1801 (repealed).

[3] Law No. 44 of 1967.

Deputy, five or more practising advocates and proctors and the Registrar of the Supreme Court.

A Council of Legal Education was established in 1874. The composition of the Council was on lines similar to the body to whom functions were delegated in 1858. The Council of Legal Education was incorporated by the Council of Legal Education Ordinance of 1900[4] for the purpose of supervising and controlling legal education.

In 1874 for the first time provision was made for the delivery of ten lectures on Jurisprudence by a member of the Council. The first lectures were however not delivered until 1884.

The Courts Ordinance of 1889,[5] contained a schedule of rules regulating the admission of advocates and proctors based on a scheme prepared by a member of the Council of Legal Education. The provision for formal instruction through lectures was organised under the 1889 rules which also made provision for entrance requirements, examinations and practical training. The Council in 1895 leased premises for an office, library and the holding of lectures and acquired a building in Hulftsdorp in the proximity of the courts which was named the Ceylon Law College. The primary responsibility for the education and training of members of the legal profession thereafter devolved on this institution. A student who passed the examinations of the Law College, followed a period of apprenticeship under a practitioner and satisfied certain other requirements, could apply to the judges of the Supreme Court for admission to the profession.

The Council of Legal Education Incorporation Ordinance of 1900[6] gave power to the Council of Legal Education to amend the rules contained in the Schedule to the Courts Ordinance. The Council of Legal Education in the exercise of its rule making powers have amended the original rules from time to time.

The composition of the Council of Legal Education was altered by the Council of Legal Education (Amendment) Law of 1974.[7] The Council of Legal Education up to that date had consisted of the judges of the Supreme Court, the Attorney-General and representatives of the legal profession, and the government had no control over the Council. The Council under the Law consists of the Chief Justice, Attorney-General, the Secretary to the Ministry of Justice, and four members nominated by the Minister of Justice. The Minister of Justice also has power under the Law to give directives to the Council of Legal Education on matters of general policy. This Bill was bitterly resisted by law students who feared that the autonomy of the institution was being destroyed and legal education brought within the realm of politics and political interference with all the evils that this entails in the political context of Sri Lanka. The first ever strike at the Law College took place at this time. The Minister and government speakers during the passage of the Bill sought to allay these fears.[8]

4 Ordinance No. 2 of 1900, (1956) Ceylon Legislative Enactments, Vol. x, p. 24.
5 Ordinance No. 1 of 1889, (1956) Ceylon Legislative Enactments, Vol. 1, p. 31. This Ordinance was repealed by Administration of Justice Law No. 44 of 1972.
6 Ordinance No. 2 of 1900, (1956) Ceylon Legislative Enactments, Vol. x, p. 24.
7 Council of Legal Education (Amendment) Law No. 6 of 1974.
8 See Official Reports of The National State Assembly, 21 February, 1974, 5 March, 1974.

The functioning of the Council in the new set-up has served to show that these fears were not unjustified. One of the first steps the Council has taken is to separate the functions of Principal and Registrar of the Law College which had hitherto been vested in one individual appointed by the Council, and to provide that the Registrar would be an official of the Ministry of Justice. In this way ministerial control over the Law College was effected in a subtle way which was never foreseen at the time of the passage of the Bill.

The minimum educational qualification required of applicants desiring entry to the Law College under the old rules in the case of advocate students was the G.C.E. (Advanced Level) examination with three passes in one sitting, and for proctor students was the G.C.E. (Ordinary Level) examination with five credit passes, four of which at least must be in one sitting. In addition, all applicants were required to have credit passes in English language and Sinhala or Tamil language at the G.C.E. (Ordinary Level) examination. The Swabasha languages (Sinhala and Tamil) replaced Latin as a requirement in the 1960's. In 1963 an entrance examination open to those who satisfied the above educational qualifications was introduced. Competency in the English language and either Sinhala or Tamil and an aptitude for legal studies were the criteria for entrance. After the fusion of the two branches of the profession an Attorney-at-Law student must satisfy the requirement earlier prescribed for advocate students.

The advocate and proctor students in the years prior to fusion followed the same lectures though there were a few subjects which were prescribed exclusively for advocate or proctor students. A student is required to pass three examinations before he obtains the prescribed educational qualifications. A student may finish the examinations in a minimum period of three years. Examinations are held twice a year, in April and in October. Lectures are delivered from January to September. Therefore large numbers of those who sit in April are failures in the previous October examination. The present system provides only for written examinations, the practice of holding *viva voce* for candidates who had come close to a pass having been dropped in 1955.

The medium of instruction was English until 1971. After 1971 some subjects were taught in Sinhala for Sinhala students and in Tamil for Tamil students. In every succeeding year progressively more subjects are being taught in Sinhala or Tamil. The requirement of a credit pass in English as a precondition for entry and the continuance of English as the medium for the majority of subjects has been criticised on two grounds. Firstly, that thereby the legal profession is confined to the English educated elite — an untenable situation in a socialist era in which class privileges are looked upon with disfavour. Secondly, the language of secondary education is Sinhala or Tamil and it is unfair to expect students educated in Swabasha to follow a law course in English.

The Law College is at present a free-levying institution and is along with the accountancy institutions among the few fee-levying institutions of higher education in Sri Lanka. The Universities and technical colleges provide free tuition. The lecture fees were raised in 1974 to Rs. 600/- a year (this represented a 33 per cent increase)

and examination fees and an admission fee are also charged. The Council does not receive a government grant and all expenses are met from the fees of students and funds which have been vested in the Council by the government at the time it was established.

The Principal, two Readers along with the clerical staff constitute the permanent staff. There are about 40 visiting part-time lecturers (members of the legal profession) who are paid according to the lectures they deliver. Thus the great majority of teachers are part-time employees.

The Law College teaching staff upto 1970 consisted entirely of visiting lecturers who taught part time. In the conflict that arises between the needs of his profession and the needs of the students it generally happens (there being exceptions) that the practitioner inclines towards the needs of his clients and the furtherance of his career and the students suffer. Also part-time teachers come to College only for classes and have little or no contact with students. In 1970, one full-time teacher was appointed, and in 1971 a second full-time teacher took up duties. But the large majority of the teachers are and have always been part-time. The Law College has suffered the evils and disadvantages consequent upon such a system.[9]

The Council of Legal Education (Amendment) Law which re-constituted the Council was passed without any consultation with law teachers or law students. Law teachers and law students are not represented on it. Students who made representations after the Bill was presented were informed by the Minister that he did not believe in student representation. The Bill was presented, rushed through the National State Assembly and passed and at no stage was the views of the law teachers sought. Neither the law teachers nor the legal profession was consulted in the drafting of the Bill. The Bill was published in the Gazette on 14 February 1974, was presented in the National State Assembly on 21 February 1974 and was passed on 14 March 1974. Perhaps partly due to lethargy, partly due to the fact that whatever would have been said would have been of no avail, and partly due to the fact that the government does not encourage dissent and it was known that the Minister had already made up his mind, the law teachers made no representations during this short period.

The Law College as it existed under the former institutional structure or under the reconstituted set-up offers no place to law teachers in the framing of policy and governance This situation and the fact that they were part-time teachers was perhaps the reason why the teachers of the Law College have not significantly contributed to the framing of policy and the development of and improvement of legal education.

About 120 to 140 students enter the Law College every year. Bearing in mind that the course is spread over three years and that some students drop out this means that there are about 350 students on the lecture roll. This number represents a gradual increase in the

[9] See *Legal Education in a Changing World.* Report prepared by International Legal Centre, New York, (1974), p. 19-20, 98-103.

number of entrants from the early years of this century, when about 75 students were admitted annually.

The Law College was one of the earliest institutions of higher education which was set up in Sri Lanka. The Medical College was established in 1870. But as has been noted, there was a system of legal education in existence even before the Medical College was set up, which was responsible for admitting persons to the legal profession. Along with the medical profession and a career in the civil service, the legal profession offered the three main avenues of employment for the young and ambitious student in the nineteenth and early twentieth centuries. In many respects the lawyer who was active in politics and led the agitation for independence, was an important figure in the early years of the British period. Among the Ceylonese elite who emerged during the British period the lawyer occupied a prominent place in more respects than one. But as the years went by and after the setting up of the University of Ceylon with a number of courses in various subjects and the availability of opportunities of good employment for graduates, the unique position of the lawyer was to some degree affected. But the lawyer continues and will continue to occupy a prominent place in Sri Lanka.[10]

The Law Faculty of the University

When the idea of setting up a University was mooted in the 1920's the question of the establishment of a Law Faculty naturally came up for discussion. Sir Anton Bertram, a distinguished Attorney-General and Chief Justice, voiced certain criticisms of the legal education provided by the Law College.[11] He contended that there was a lack of effective supervision and direction of legal studies and that the Law College was nothing more than a collection of lecture rooms and examination halls. The absence of a permanent staff meant that students had little personal contact with their lecturers and an aura of intellectual ferment was not present. Therefore Sir Anton Bertram proposed that the Faculty of Law of the new University should be entrusted with the main task of providing legal education for both advocates and proctors. He proposed that once a student had received a degree the Law College should provide courses in practical subjects and practical training. His proposals were accepted by the Council in 1924, but were subsequently repudiated.

The Law Faculty of the University was not set up until 1948, when a separate Law Faculty distinct from the Law College was established. Thus there prevails in Sri Lanka a system of legal education where the University and a professional institute provide different course, different examinations and different qualifications. From the outset there was similarity in the syllabuses of the subjects taught in the two institutions. From October 1970 onwards the syllabuses of the subjects taught at the University for the LL.B. degree are identical with the Law College syllabuses except that there are some courses taught at the Law College which are not taught at the University. This dual system of legal education was what Sri Anton Bertram's proposals were designed to avoid. Sri Lanka thus (though not entirely intentionally) has followed the British system.

[10] Marshall Singer, *Emerging Elite* (1964) p. 79-82.
[11] R.K.W. Goonesekere, *op. cit.*

The University course was spread over a period of 3 years, originally with an examination every year, but now examinations are held at the end of the first and third year. The student who passes the final examination obtains the LL.B. degree but does not have the right to practise. In 1951 when the first set of students graduated the law graduate was required to sit for all the examinations held by the Law College in order to be admitted to the profession, although he was exempted from attending lectures. Exemptions from Law College examinations were granted as time went on in recognition of the high standards set by the University and the fact that the syllabuses of the two institutions were very similar. Today the law graduate will only sit for the final examination at the Law College and is exempted from the first two examinations.

The University also confers postgraduate degrees (LL.M. and Ph.D.) on the basis of a dissertation. Uptodate postgraduate teaching classes have not been conducted though there was provision made in the rules (since repealed) for a course leading towards an LL.M. degree based on an examination and a dissertation. There is provision in the present rules for a B.Litt. on the basis of lectures attended and an examination which a student may sit after passing the LL.B. examination. But B.Litt. courses have not yet been conducted.

The undergraduate courses conducted by the University of Ceylon from its inception were for students who were registered as full-time students, attending lectures, tutorials (and in some disciplines doing practical work) and resident on or in close proximity to the University Campus. In the 1960's large numbers of Arts students qualified for admission (obtaining 3 passes at the G.C.E. (A.L.)). But the Universities were not able to expand the facilities to absorb all of them. Therefore in this situation the Universities began to conduct external examinations at the graduate level. External students studied privately or at private institutions which had no official connection with the University or the governmental education structure, and sat for examinations conducted by the Universities, along with the internal students.

In 1962 the University of Ceylon started conducting examinations for external students. From the outset one of the most popular courses for which external students opted was law. Among the external law students there were both full-time students and those who while being employed studied part-time. Persons from different walks of life opted to do law. Among the part-time students, teachers in government service were the largest group. The number of teachers who registered increased sharply after the Teacher Training Entrance Examination was made an alternative qualification to the G.C.E. (A.L.) for admission to an external degree course. The conducting of examinations in the Sinhala medium commencing from 1971 had the result that (in combination with the making of the Teacher Training Entrance Examination a qualification for entry) a large influx of external students registered for external law degrees. Public servants from various categories in the public service ranging from clerks to a retired Surveyor-General and senior lecturers of the University (a Ph.D. (London) in Sinhala and a Ph.D. (Cambridge) in Geography) enrolled to do law.

The external students sit for the same examination as the internal students but they do not have any connection with the University.

They are not permitted to use the library or to follow courses conducted by the University.

One of the problems which confronted the external students in law was a paucity of legal literature dealing with the laws of Sri Lanka. Students thus had to gather their knowledge from reference to statutes and case reports. A second problem connected with the first was that most students did not have access to a library at which they could do reference and study. The externals who had access to the library of a lawyer who possessed a good law collection (and such lawyers are few) or those who enrolled at the Aquinas University College (a private institution) which had a collection of the recent Ceylon law reports and a few text books (some of them out of date) had some means of reference and study. Even the few externals who did have access to private law collections had no access to the materials on the Roman-Dutch law and South African law which the University library alone possesses. Leading legal journals are also not available in most private collections.

Thus many externals were compelled to do private studies on their own with no access to libraries, which meant that they could not refer to statutes and case reports. The problem of the absence of text-books on the laws of Sri Lanka which covered the syllabuses was met in the Universities by the lecturers giving relatively complete lecture notes. At the outset there were no institutions which provided instruction for externals who therefore did not have the benefit of lectures and were at a great disadvantage.

The external students were not in touch with the lecturers who conducted the courses and set the questions. The internal student was always at an advantage because he was in contact with the lecturers, and from the emphasis laid by the lecturer in his lectures and from tutorials, he was often able to assess what the important sections of the syllabus were and confine his study. Thus while the university students were able to confine their studies to a part of the syllabus the externals invariably studied the full syllabus.

The consequence of the conducting of external law degree examinations was that a number of tutories were established which provided courses for law students. Some of them were better than others but the standard of teaching, especially at the outset, was not high.

In view of the above factors it is not surprising that even though the externals worked every hard (perhaps even harder than the internals) at the outset they fared disastrously in the examinations. Of the large number who sat the First Examination in Laws in the early years less than 10% passed. Therefore the majority did not qualify to proceed further. Those who passed the first examination and qualified to sit for the final examination had reached a certain standard. Therefore the percentage of passes in the final examination was higher than in the first examination.

As time went on however the standards of the external students improved considerably and the percentage of those who passed examinations increased due in part to the development of private institutions

which provided lectures for those sitting for external examinations. But their performance was not as good as the internal students. This is reflected by the fact that though external students were able to pass the examinations, ten years after the externals first sat for the final examination, only one external student had obtained a second class (lower division) and no external student had obtained a second class (upper division) or a first class.

A significant change took place when the medium of instruction was changed. In October 1970 the Law Faculty started lectures and courses in three languages, viz. Sinhala and Tamil in addition to English. Immediately there was a rush of persons registering as external students for the law degree. There were over 2,000 registrations, almost all of them being those who wished to sit the examination in the Sinhala medium. A large number of those who registered were unemployed Arts graduates who had passed out in the Sinhala medium and who felt that a law degree offered an avenue of employment.

Up to the early 1970's unemployment was not a problem among law graduates even though arts graduates were facing this problem. The small number of law graduates who passed out every year were able to obtain gainful employment or to practise at the Bar. But the increasing number of law graduates who passed out in recent years and the severe economic crisis has posed employment problems to law graduates. As Swabasha law graduates enter the job market in increasing numbers (the first set passed out in 1974) the problem is becoming more acute.

The University unlike the Law College provides free education. Tuition is entirely free. In the past students in financial need were able to obtain bursaries to cover in whole or in part the cost of books and maintenance. But today they may obtain a loan for this purpose which is repayable when employment is obtained.

External law students who studied at private institutions had to pay fees (about Rs 750/- per year) and also registration and examination fees to the University (about Rs 250/- for the whole course provided examinations were passed at the first sitting).

The University unlike the Law College has functioned with a permanent staff consisting of a professor and lecturers of various grades. The number of permanent members on the Faculty Staff has been few (always less than 10), partly due to the high qualifications set down for appointees up to the late 1960's, and the small number of students. In the early years the intake of students was on the average about 10. This number gradually increased and in recent years the intake is about 50 a year.

The small numbers who were admitted to the Law Faculty in the early years could be traced to a number of factors. A Credit in Latin at the G.C.E. (Ordinary Level) was required of a student as a pre-requisite for entry into the Faculty until 1961. Therefore only students from schools where Latin was taught could aspire for admission to the Law Faculty. In practice this meant that only the students who had attended the more exclusive public schools where Latin was taught could enter the Law Faculty. After 1961 the Latin requirement no

longer was a precondition for entry. But a student who at time of entry did not possess the prescribed Latin qualifications had to sit for a Latin paper in the First Examination in Laws. In 1970 the Latin requirement was finally omitted from the law course.

Another reason why the number of students who entered the Faculty was small was because until 1970 the medium of instruction was English. The Law Faculty had no separate entrance test nor was a student required to obtain passes in specific subjects at the G.C.E. (Advanced Level). A student who had qualified for admission to the University whatever the subjects he had studied in school could apply for admission to the Law Faculty. Almost all students who applied were Arts students. The vast majority of students who entered the University in the Arts stream had done all their primary and secondary education in the Swabasha and knew little if any English, which knowledge was not sufficient to enable them to follow a law course and sit examinations in English. Due to this fact a large percentage of those who entered through the Arts stream and who would perhaps have opted for Law were not in a position to do so. Only a few from the urban areas (mainly from Colombo) where English was taught in the schools or who had come from an environment in which English was spoken could aspire to enter the Law Faculty. Therefore the students of the Law Faculty consisted of those who had obtained an English education, the majority of those coming from the more affluent homes and the public schools.

The policy of the Government in the 1960's was to permit the large number of Swabasha educated students in the Arts stream who passed the University Entrance examination to enter the University. This resulted in a large influx of students into the Arts Faculties (which included the Humanities), courses being conducted in Swabasha. Since Law was not taught in the Swabasha medium, the pressure of numbers was not felt in the Law Faculty. In 1970 when law courses in the Swabasha medium commenced, one may have expected pressure of numbers to become overwhelming. The Faculty, however, argued strongly that due to the fact that library facilities were limited, the number admitted every year should not be more than 50. A similar argument had been of no avail at the time when a large influx of students qualified to enter the Arts Faculties in the 1960's. But the large number of unemployed graduates — a consequence of the unrestricted admission to the Arts Faculties in the 1960's — had by 1970 become a serious problem. They were unemployed and unemployable and it was further felt that student unrest would be aggravated by the admission of large numbers. The government was not inclined to expand the number of students admitted to the Arts Faculties. Therefore the Law Faculty was able to limit the admissions quota to 50. And in this respect unlike other Arts courses which are overcrowded the Law Faculty has small and relatively manageable classes in which an element of staff-student dialogue can be carried on. This is not possible in the other Faculties in the Arts stream nor even in the Law College where the number of students in class may vary from 80 to 140.

The Law College as stated above conducts an aptitude test for those who wish to study law. The University Law Faculty has no special requirements and admission is based on the marks obtained at the G.C.E. (Advanced Level). No special G.C.E. (Ordinary Level)

requirements are prescribed for entry to the Law Faculty other than those which are prescribed as prerequisites for those sitting the Advanced Level. The Law College on the other hand insists that those who sit the entrance examination have obtained a Credit in English and in Sinhala or Tamil in the G.C.E. (Ordinary Level). The result is that a student may enter the Law Faculty having studied in secondary school any combination of subjects in the humanities, the social sciences, commerce or the sciences. There is no relationship between the subjects which a student has studied in school and the subjects he studies in the Law Faculty. There have been students who had fared brilliantly up to the Advanced Level and have fared poorly in the law examinations. There was one student who obtained an "Exhibition" at the Advanced Level which meant that he was probably among the top ten in the country among the 4,000 who sat G.C.E. (Advanced Level). But he failed the Law Final three times. On the other hand, students who had fared poorly in their secondary education, have been known to fare brilliantly in Law. This illustrates the fact that law requires a special aptitude. Therefore those who are chosen for the law course should be chosen on some basis which tests their aptitude for law. There are some students who enter the Law Faculty, and it is apparent fairly early on that they just do not have an aptitude for law. The approach to a problem in a legal and analytical way, the ability to distinguish between the operation of legal rules and other ethical and moral considerations, the ability to distinguish between the relevant and the irrelevant, to write concisely and to be able to summarise facts and principles are qualities which the aspiring law student should possess to some degree.

It is therefore very necessary that the Law Faculty provides an aptitude test for those who wish to enter the Faculty. The present system is that there are 50 places in the Law Faculty and among those who pass the G.C.E. (Advanced Level) Examination and who opt for law, the 50 with the highest aggregate are admitted. This is undesirable. Since Pali, Sanskrit and Sinhala are subjects in which it is possible to gain higher marks than in subjects like History, Geography and Government a large number of students who have studied oriental languages are entering the Law Faculty. Prior to 1970 when English was the medium of instruction this was not so, because most students who had studied oriental languages came from schools where prior to entry a knowledge of English sufficient to follow the law course in English had not been imparted. The view may be expressed that a student of languages has the least adequate background for the study of law.

As a long term measure it is desirable that a course covering elementary legal principles and concepts and the structure of the legal system should be made a subject of study for the G.C.E. (Advanced Level) and the G.C.E. (Ordinary Level). A student who aspires to enter the Law Faculty should have studied law and have shown an aptitude for the subject at the secondary school level. Also students who opt to study law at the tertiary level, would do so having studied law and being familiar with the subject. At present, students opt for law without familiarity with the subject, primarily for the employment opportunities and status prospects it offers.

A Comparison of Legal Education at the Law College and the Law Faculty

> While a sound training in the law as presently given at the University by entirely academic teachers will probably equip lawyers to the Appeal Court and the Judiciary, the training at the hands of practising lawyers and in the vicinity of the law courts should impart to a Law College student a greater confidence in the handling of cases.[12]

This statement reflects a view held by practitioners who maintain that the University course which the law graduate follows is academic while the Law College student obtains a practical background. It is proposed to examine in some detail this view. It is true that in the University the emphasis is on the study and understanding of legal rules in a broad perspective. At the Law College the student generally studies cyclostyled notes. The Law College student reads few statutes and scarcely ever refers to cases. The Law College examination however tests the student in procedure which the University does not and requires of a student a knowledge of legal rules covering the entire syllabus. Questions at the Law College are generally direct and straight forward and requires little of the student other than a parrot-like repetition of legal rules. On the other hand, a University student is required to have a knowledge and understanding of the law, though he too (as any student anywhere in the world) has to absorb and retain a considerable degree of knowledge in his mind for examination purposes.

The Law College system of examinations has this serious defect. The student is merely tested on his knowledge of legal rules and the majority of students feel that referring cases and obtaining an understanding of the law is a waste of time. Most students will confine themselves to the study of rules of law. They are not interested in anything else. As a teacher at the Law College the present writer's experience was that it was difficult to interest most students in reading cases and journal articles, because they felt that for examination purposes this was useless. The student is tested on his knowledge of the bare legal rules and he studies this not from statutes or case reports but from lecture notes or books. Therefore much of what he studies is forgotten immediately after the examination. He is also required to "cram up" sections of a statute. Thus a student is mainly required to know and reproduce provisions of the Civil Procedure Code. But the examination does not test his understanding of the case law and the basic organization and principles of the Code.

It is true that after any examination a student will forget a lot of what he has learnt. But it can be said that the University student retains much more in his mind than the Law College student — the reason being that he is required not merely to cram the law but also to understand it and gain a wider perspective.

A student at the Law Faculty is one who has obtained admission to the University — generally having passed four subjects at the G.C.E. (Advanced Level) examination. The Faculty of Law of the University has been able to draw the cream of the Arts students who enter the university. A law degree is regarded as providing one of

[12] R.K.W. Goonesekere, *op.cit.*

the best if not the best passport to employment among those who have been educated in the Arts stream. It is also a gateway to a status profession. On the other hand those who have entered the Law College prior to 1973 may have merely passed the G.C.E. (Ordinary Level) examination (thus qualifying for the Proctors' course) or if they had qualified for the Advocates' course invariably consist of those who were not able to obtain admission to the University, having merely passed three subjects in the G.C.E. (Advanced Level) examination. While it is true to say that the University student qualifies with a wider knowledge and understanding of the law, it must be remembered that this is not only due to a more suitable approach to teaching, more dedicated and capable lecturers who hold permanent appointments and comparatively smaller classes which make possible discussion, but also due to the superior capabilities of those who enter the University.

The Law College has recently started a system of moots. This is optional and therefore benefits only a few of the students, as does the opportunity given to students to take part in a legal aid scheme.

In the light of the above comments it is now proposed to consider the view stated above that the Law College course provides a more practical approach. Whether the Law College student or the University student is a success in practice must depend substantially on the experience that he acquires once he enters the profession. Neither institution gives, and perhaps cannot give a student much guidance to face the problems he will have to face when he commences to practice, such as the conducting of cases and a background to the working of the courts. Success at the Bar also depends on the contacts a person has with other lawyers who may help him along, the ability to get on with people (judges, lawyers, clients), the ability to conduct a case which involves *inter alia,* preparation of a case, a knowledge and understanding of legal principles, the ability to communicate and sway the emotions and intellect of judges and jurors, the ability to read their minds and adjust the presentation of arguments accordingly and ability to conduct cross-examinations effectively. The factors which would help a practitioner to be successful are not acquired by the student whether at the Law Faculty or the Law College and perhaps at the most can only partly be imparted in an educational institution. Therefore it is doubtful whether the training given at the Law College as compared to Law Faculty can be said to give a student a greater confidence in handling a case. Thus with respect it is submitted that it is difficult to accept the view that the Law College education equips a student to practise and gives him a better practical training.

Neither the student at the Law College nor the University obtains a practical training. The main difference between the two institutions is that the University course can provide an intelligent student with a sound knowledge and understanding of the law, which the Law College course and examinations do not. Proximity to the courts enables a law student to follow cases in court (not all students do this). But by itself this will not be of much use.

An intelligent student at the University can acquire a sound knowledge and understanding of the law which would help him to succeed, provided he subsequently obtains a good knowledge of procedure and

other subjects not taught at University and even at Law College, and has some of the advantages and qualities required for success at the Bar.

On the other hand the Law College student is merely required to know a large number of legal rules and students by the very wideness of the syllabus and the questions set confine themselves to cramming up legal rules, a greater part of which they forget soon after the examination. This type of examination which requires a great deal of hard work and cramming is justified by some on the grounds that the person who aspires to enter an exacting profession, a profession which requires hard work must demonstrate that he has the capacity for hard work. The said part is that he may demonstrate his capacity for hard work and cramming but he is not required to demonstrate an understanding of the law nor is he given a knowledge of the law which he is likely to remember and carry forward into life.

When one examines the performance in practice of members of the two institutions it is worth mentioning that the Attorney-General's Department has invariably preferred to take in law graduates provided they have obtained their professional qualifications. Since attendance at lectures is not compulsory they may have obtained such qualifications without spending much time at Hulftsdorp during the time they were preparing for their legal examinations.

Some thoughts on the content of Legal Education

A part of the knowledge a student is expected to acquire at the Law College or University (with the exception of procedure the syllabuses are very similar) will not be of practical use in the courts. To take an example (which may not be typical) a lawyer though he may have learnt as a student about the duty of care and remoteness of damage, may never come across a case dealing with these issues in many years of practice. Much of modern law consists of delegated legislation which is not taught by either institution. There is certainly a case for redrafting syllabuses. A balance must be struck between giving a student an understanding of law, legal principles and how the legal system works and the knowledge of specific areas of law which will be important and relevant to him in the practice of his profession. There is scope for reformulation of syllabuses and courses to make them more relevant to the legal issues which recur in life, society and the courts.[13]

There are however two other possible areas of reform and expansion of legal education. Firstly students receive little preparation for conducting cases, appearance in court and knowledge of the practical work of the officers of court and court procedure. A student may graduate in law without ever having entered a court of law. Legal education in Sri Lanka can profitably concern itself with the need to provide more adequate practical training.

Secondly law students are merely required to gain a knowledge of legal rules — the doctrinnaire study of legal rules. The question arises whether there should be a wider dimension to legal education.

[13] See Molly Cheang in (1973) 4 Lawasia 53.

Law is generally presented and regarded by most lawyers and law students as a body of rules which are applied by courts. Law is viewed as a complex but autonomous discipline. Other disciplines such as economics, sociology, history and the reality of power politics are not regarded as falling within the ambit or concern of a lawyer. Economists and historians also have the same narrow outlook confining themselves to their disciplines.

A Report of a Committee entitled "Legal Education in a Changing World"[13] emphasises that the study of law should entail a study of crucial economic and social issues and policies of development and of the values which may give law a deeper, ultimate meaning. This is particularly important at this time in Sri Lanka.

The Report argues[14] that the study of law should also be concerned with the following issues.

(1) The study of law should be concerned with building new political institutions, roles and processes.

(2) The study of law must be concerned with the study of ways to attain more distributive justice from the economic activities of society.

(3) The study of law must concern itself with changes in the social order. Conditions of equality among citizens must be defined and then assured. The legal rights of historically depressed groups (whether ethnic or economic) must be investigated.

> Thus the study of law as a professional discipline can be perceived as the study of rules, roles and underlying policies which are supposed to establish and govern political and economic systems and allocate rights, benefits and responsibilities in society. On one level the study of law must, certainly address very specific topics — such as the content and application of rules about land, employment, investment, and commercial transactions — and analyse them with careful detail. On another level, the study of law should address the historic source, rational and contemporary implications of rules. And on still another level the study of law should address basic problems of defining the system of justice which should underlie changes in the existing order. And finally, it must motivate and engage its students — imbue them with a sense of excitement about the challenge of the discipline and its use in the real world.
>
> The traditional approach to the study of law not only fails to fulfill these expectations it has lacked the commitment and resources to do so.[15]

There exists an urgent need for research concerned with understanding law in its social context, with the reformulation of legal policies and doctrines to better serve developmental goals and for fresh contributions to legal philosophy. This kind of work is lifeblood for a vital, growing, changing legal system which evinces a basic concern for socialism and justice.

There is a challenge in Sri Lanka today to organize a system which will better serve the cause of legal education. Legal education must break away from anachronistic traditions and uncritical acceptance of received foreign models. The starting point is to redefine goals.

[14] *Legal Education in a Changing World, op.cit.*, pp. 29-31.
[15] *Ibid.*

determined more precisely by analysing the needs of the environment, and by resources realistically available to develop a new system geared towards these goals.

The question may be posed whether it is not essential to give a student who begins to study law at one of the two institutions, a knowledge of rules of law first, before too much emphasis is placed on the social, political and economic dimensions. It may be asked whether a student can from the outset without having any idea of 'law' at all understand or be expected to understand such dimensions. The three-year law course may not be sufficient to take in an expansion of the syllabus on these lines. It could be argued that institutions like the University and Law College should concern themselves with first things first i.e. give student a source knowledge and understanding of rules of law.

There are of course dangers in such an approach and if too much emphasis is placed on the social and economic dimensions to law, a student can lose his bearings and not obtain a knowledge and understanding of rules of law and the legal system. But this is not a present hazard since the institutions of legal education in Sri Lanka as they exist today have scarcely begun to think on the lines of widening the scope of legal studies.

The existence of two institutions for legal education

The question must inevitably arise whether there is a need for two separate law courses conducted by the Law College and the University and whether the existence of two separate institutions can be justified. In the present institutional set up it is difficult to take decisions about and deal with questions relating to legal education as a whole. The reason is perhaps due to the fact that the Law Faculty comes within the purview of the Minister of Education and the Law College within the purview of the Minister of Justice. Before 1974 the Law College was an autonomous body while the University was under the control of the Minister of Education. At this stage of economic crisis and shortage of capable staff in the swabasha it is surely a waste of resources to have virtually identical lectures on identical syllabuses in institutions situated three miles apart. No doubt the University approach, emphasis and methods of teaching are different from the Law College and there are valid reasons which may be put forward for the University Law Faculty continuing its separate existence. But in which case the University might well consider teaching its subjects at a different level and not following the same syllabuses as at the Law College. Perhaps there could be provision for students to follow both the University and the Law College courses at the same time and obtain parallel qualifications, without having to complete one course before commencing the other.

It has been argued above that the University Law Faculty may be said to have attracted the cream of the Arts graduates who have passed the G.C.E. (A.L.) and that this is one of the reasons for the alleged superior performance of law graduates in the profession. Now that that the Law College has raised its entrance requirements the gap between the two institutions may become narrower. The Law Faculty may have a right to a separate existence. But the question must be asked and answered whether a case can be made for two

institutions three miles apart, providing courses on identical syllabuses at a time when there is grave shortage of staff not to speak of financial difficulties and whether these latter factors do not outweigh other considerations. Free legal education is offered by the University and not the Law College and any amalgamation will have to take this fact into account and provide access to free legal education.

The absence of a local legal literature

The Professor of Law in the University of Ceylon writing in 1952 pointed out[16] that most branches of the laws of Sri Lanka are obscure to students, practitioners and judges alike. The main reason for this was the paucity of legal literature and the fact that few textbooks had been published. The fact that there were few textbooks meant that reference books of a more detailed or an academic nature were even more conspicious by their absence. From about 1960 however there has been a change and some legal books have been published. But the paper shortage and the high cost of printing books make it very unlikely that the renaissance in legal writing in Sri Lanka will be maintained in the latter part of this decade.

There were a number of reasons which contributed to the absence of legal books before 1960. The first factor was that a Law Faculty was not set up until 1948. Prior to that legal education was imparted at the Law College where the teaching staff consisted of part time lecturers who were involved in the practice of law. It could be said that a prerequisite for the development of a legal literature is the existence of a body of full-time law teachers. Part time law teachers who face the pressures of practice and the demands of their clients have neither the time nor the inclination to research and write books, there being notable exceptions. A Law Faculty was set up in 1948, but naturally it took time to build up its staff and traditions. The second factor which was responsible for the absence of law books prior to 1960 was that Sri Lanka is a small country and the lawyers comprise a very small class. This meant that there was a limited reading public for law books, and therefore writing books about law was not a profitable and from the financial point of view was a rather hazardous venture. Prior to the 1950s an author was most likely to find it difficult to sell within the first year or two 300 copies of a published work.

For the above reasons until about 1960 the majority of the books which appeared were of a general nature covering the entire laws of Ceylon or a large part of it. Specialised works dealing with a particular subject were rare. But between 1960 and 1975 there was a significant increase in the number of published legal works. A number of factors contributed to this. From about 1950 onwards, the number of law students increased and law students provide a market for legal books. The number of practitioners increased as a consequence of the increase in number of law students. Finally to a great extent due to the setting up of the Law Faculty and the creation of an interest in a wider approach to and an academic study of law, the potential purchasers of law books of a more specialised nature increased. It is however regrettable that this momentum is not likely to be

16 (1952) University of Ceylon Review 31, at 43.

maintained in the future because the high cost of paper and printing means that once again printing and publishing a law book will be a hazardous financial venture.

The law student in Sri Lanka has therefore always been confronted with the situation that there are few textbooks covering the subjects he studies for his examinations. Recent publications have only in a small way alleviated this situation. In a different way, a practitioner when he wants to refer a particular point of law has the problem that he may not have a textbook to assist him. The books produced in recent times by no means filled all the gaps and still the major area and the greater part of the laws of Ceylon have not been covered by specialised textbooks. In this situation the lecture notes of the lecturer, both of the Law Faculty and of the Law College, become very important. The students are very dependent on notes and the practice (though many have deplored it) inevitably arose of a dictated lecture note or a cyclostyled note. The former being the common practice of the University and the latter at the Law College.

The absence of textbooks on the laws of Sri Lanka would have posed less problems if, like in many other British colonies, the entire body of English law had been incorporated. In such a situation it is possible to refer to the textbooks on the English law. In some countries where the English law has been adopted. reference to English textbooks is possible. But where the law has been codified there was still the problem that there were significant differences between the codified law and the English law. In Sri Lanka there were other reasons which made English textbooks only partially relevant, if at all. The law of property was based on Roman Dutch law and therefore problems arose even as regards subjects like trusts where the English law had been codified, because English law in Sri Lanka exists and co-exists with Roman-Dutch law on a Roman-Dutch foundation. In many other subjects such as persons, succession, property, torts, contracts, the law of Sri Lanka consists of a mixture of English law and Roman-Dutch law. Therefore it is not possible in the absence of a local textbook to refer to a foreign book (English or South African) because the law is not derived from a single foreign source and is a mixture of Roman-Dutch law, English law and statute law. The statute law may with modifications be derived from English sources.

A new problem now emerges. As the law is being rendered in Sinhala and to a lesser extent in Tamil, what legal literature exists will gradually become dated. There is a prime need for a Swabasha legal literature. But due to the high printing and publishing costs it seems very unlikely that such a literature will emerge.

Summary

The Sri Lanka Law College (formerly the Ceylon Law College) and the Faculty of Law of the University of Sri Lanka (formerly the University of Ceylon) are both responsible for legal education in Sri Lanka. These two institutions conduct separate courses of lectures and examinations. But the syllabuses for study prescribed by the two institutions are very similar. The graduate of the Faculty of Law obtains a degree (LL.B.). The student who passes three examinations

at the Sri Lanka Law College, after following a period of apprenticeship may apply for admission to the profession. The law graduate is required to sit for the third and final examination (he need not attend lectures) and follow a period of apprenticeship in order to qualify for admission to the profession. A dual system of academic and professional legal education exists due to historical factors peculiar to Sri Lanka and is not a result of imitation of the British system.

The Sri Lanka Law College which is responsible for professional legal education was set up in the late ninteenth century. But the origins of legal education go back to the early ninteenth century, because prior to the establishment of the Law College there was a rudimentary system of legal education and training for the admission of persons to the legal profession. The Law Faculty of the University was established in 1948. But during its relatively short period of existence the Faculty of Law has exercised a not inconsiderable influence on the legal system. The growth of a legal literature can to a very great extent be ascribed to the establishment of the Law Faculty. Crown Counsel (since 1972 called State Counsel) are recruited mainly from practitioners who have obtained a law degree.

The student who enters the Law Faculty of the University, has as a general rule, a superior secondary school record than a student who enters the Law College. The emphasis in teaching and examinations at the Law College is placed on testing a student's knowledge of legal rules. The approach at the University is different and a student is tested not merely on his knowledge of but on his understanding of legal rules, their wider implications, his ability to analyse and his grasp of legal principle and understanding of legal method. The view held by some practitioners that the Law College course is of more practical use to a future practitioner is debatable.

The absence of a local legal literature was for a long time a problem for the law student (as indeed it was for practitioners). The law students studying externally for the LL.B. examination felt this problem more acutely because they did not have the opportunately of being taught by lecturers of the same qualifications and experience as those in the University (who also set the examination papers) and because they did not have access to law libraries. In recent times a local legal literature has begun to appear due primarily to the efforts of Law Faculty staff members. But it is unlikely that the recent impetus in legal publications will be maintained in the future because of the high cost of printing and the fact that the market for legal publications in Sri Lanka is very limited. The change over of the language of judicial administration and teaching from English into the local languages creates more problems. The need now is for legal literature in the Swabasha. It is however unlikely that such a literature will emerge.

Legal education as it exists in both institutions has concerned itself with the doctrinnaire study of legal rules. There has been no effort to teach law in so far as it relates to social, political and economic factors — no effort to make students study law in context. Further the syllabuses are modelled on the traditional approach to the study of law which has come down from earlier generations. The Law College has recently introduced courses on tax law, industrial law

and other currently relevant legal topics. But there is still a fair gap between what is taught in the Law College and the issues which a practitioner has to face. The University course is even more far removed from the issues which confront a practitioner.

Legal education today is to a great extent under governmental control. The Council of Legal Education was set up in 1874 as an autonomous body consisting of judges of the Supreme Court and nominees of the Bar Council and the Law Society. But the composition of the Council was reconstituted in 1974 and the majority of the members are now ministerial appointees. The University when it was established in 1948 enjoyed a great degree of autonomy as the term is understood in academia. But from the mid-1960s onwards governmental control over the University has increased and today the University falls under the direct control of the Ministry of Education. Thus it may be said that legal education today is very much under the control of the government through the Ministry of Justice and the Ministry of Education.

The existence of two institutions of legal education falling under different departments of government is somewhat anomalous. There are those who will defend the present structures for both academic and personal reasons. But the day must surely come when the personality conflicts which are the main factor standing in the way of unification of legal education are overcome.

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