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Editorial

Zimbabwe's Independence in April 1980, achieved as it was by a remarkable combination of revolutionary and legal activity, created a special challenge to Zimbabwean lawyers. Particularly significant for legal scholars at the University of Zimbabwe was the dramatic transformation resulting from the fact that a whole body of ideas and perspectives, unacceptable, unpopular or actually unlawful under the colonial state, suddenly became 'thinkable' and available to thinking Zimbabweans. Of these ideas, Marxism and Marxism-Leninism were only the most dramatic example, though by virtue of the election to government of a Party which proclaimed as its ultimate objective the achievement of a socialist order through Marxism-Leninism, they became especially relevant.

This new order was characterised then, as it remains today, five years later, by the basic elements of intellectual stimulation — contradiction, compromise, urgent demands for change and powerful claims for the retention of the *status quo*. Nowhere is this more evident than in the law, both within and around Zimbabwe, wherein is expressed in varying degrees of clarity, the tensions and tentative solutions generated by the material, social, economic and political realities of this ferment.

Thus Zimbabwean legal scholars face an agenda demanding, at a minimum, the study and awareness of the legal dimensions of, on the one hand — the articulated democratic demands of a liberated majority for justice, health, education, housing, employment and an end to poverty and dependence; and on the other hand — the equally articulate (if less rhetorical) claims of a powerful minority (as the first priority) for the retention or the minimum transformation of the capitalist economy. The legal dynamics of this contradiction must be analysed and understood in the light shed by scholars using a wide variety of perspectives.

The task also demands a thorough knowledge of the substantive elements that make up Zimbabwe's legal system. This must include a full awareness of the British-designed Lancaster House Constitution, replete with historic compromises, as well as of the inherited state machine, deeply imbued through both statute law and judicial practice, with authoritarian values and techniques. It demands the urgent study and exposition of the dense body of Zimbabwean Customary Law. Nor can it avoid a basic knowledge of Roman-Dutch Law and its deeper Romanist foundations. These provide a potential pathway to the conceptual treasury of one of the oldest legal systems and to a richness of Romanist ideas developed throughout the modern world in both socialist and capitalist states which share with us this tradition. The paucity of serious scholastic exploration of Roman Law during the colonial period may be explained by the overriding imperial connection with the Anglo-Saxon Legal system. Such scholarship provides an avenue to a storehouse of knowledge and ideas, which Zimbabwean legal scholars may tread. A serious gap in our scholarship, perhaps understandable in the context of the final chauvinistic days of "Rhodesia", namely an awareness of the comparative experience

and legal knowledge of post-colonial Africa, needs to be remedied so that insights from this source can be added to the others that we must use in our efforts to make sense, for ourselves and others, of Zimbabwean legal developments at this challenging stage.

The Zimbabwe Law Review is intended as an indispensable means of meeting the above challenges. Early in 1983 the Board of the Law Department decided to work towards its publication. It also saw the *Review* as an important part of the work to evolve a contemporary and more relevant curriculum for Zimbabwean legal education. Thus readers will notice the particular emphasis given in this first issue to matters relating to Family Law, including a contribution on the subject from Tanzania, which the editors saw as requiring particular attention. The Department is also conscious of the important role the *Review* should play in an ongoing legal debate involving the Bench, the Profession, the Government and academics. This was one of the roles of the *Zimbabwe Law Journal* founded in 1961 as the *Rhodesia and Nyasaland Law Journal* by Professor R H Christie. The *Journal* ceased publication at the end of 1982.

As presently conceived the *Zimbabwe Law Review* will provide a vehicle not only for academics but also for students whose work merits publication. As the present volume shows, the pages of the *Review* are also open to non-Zimbabwean contributors, especially those writing on matters relevant to Africa and the Third World. This volume also demonstrates the editors' readiness to receive contributions from authors in Government and the profession, and we are particularly pleased to be able to publish here an article by the present Minister of Home Affairs. The *Review* will seek to encourage active debate on contemporary issues and thus the section entitled *Dialogue* seeks contributions on more immediate and controversial subjects in a style of presentation less rigorous than that required of other articles. It is hoped that the review of legal developments and the publication of relevant documentation will be a regular feature.

Thus the *Review* is seen as being launched in a new context, offering new opportunities and challenges to Zimbabwean and other legal writers. The objective is to respond with scholarship of the highest quality, regardless of its viewpoint. The Editors are conscious that by taking full advantage of this new intellectual freedom and opening the *Review* in this way to scholars from all ideologies they are making a fundamental break with the past. This however is not only consistent with the newly acquired academic freedom of the University of Zimbabwe, but also with the progressive order which is the national objective. Nor, it seems, will this new policy be inconsistent with the motto emblazoned on the facade of the Law Department: LEX EST ARS BONI ET AEQUI (THE LAW IS THE ART OF THE GOOD AND THE JUST)

Lastly we express the Department's gratitude to the Ford Foundation for its assistance in the launching of the *Review*

Editor in Chief

Harare, 18th April, 1985.

LAW AND LEGAL EDUCATION IN THE PERIOD OF TRANSITION FROM CAPITALISM TO SOCIALISM*

SHADRACK B.O. GUTTO**

1. INTRODUCTORY REMARKS

I wish to start by expressing to you the genuine honour I felt and still feel in accepting the invitation from the Law Society to come and share with you the enviable comforts of Nyanga Hills and, more importantly, some thoughts and reflections on issues that are of concern to members of the legal profession in particular and the society, in general. I thank the Law Society for extending the invitation to me. It is my hope that my contribution to the discussion on the subject of and debate on Legal Education will not fall below what you expect.

As an academician and teacher of law at the University, I consider that no subject can be of more relevance for a discussion between academic lawyers and legal practitioners in public and private sectors than the subject relating to the nature and problems associated with the structure and content of legal education to-day and in the near foreseeable future. Indeed, it is only those with static perceptions who would deny that in the past the society has gone through fundamental, revolutionary, changes and that it will continue to go through similar, although qualitatively different, changes in the future both in terms of its socio-economic and political structures, its social relations, and the ideas and morals reflecting and reinforcing those changes. From this viewpoint of change and development as a basic characteristic of human history the task of a relevant legal education as I see it is to train people who are able to adequately perform the various law related tasks demanded by society at the present moment as well as to enable them to participate positively in perceiving and influencing desirable changes. These are not merely dual objectives, they are in real life dialectically related goals.

I will approach the subject before me in the following manner:-

- (1) First, I will underline the fundamental importance of law both in capitalist society like the one which is still dominant in Zimbabwe and also in a society in transition from capitalism to socialism. I will do this primarily to dispel the uninformed views circulated by anti-socialists and anarchists that a socialist society is a lawless society as well as to show that law and legal institutions are historical phenomena that are necessary and inevitable at certain stages in social development.

* A paper read at the Law Society 1984 Summer School, Montclair, Nyanga 20 - 21st October, 1984. Section 5 in the paper has been expanded although the paper is essentially in the form in which it was presented at the Summer School.

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- (2) Second, I will attempt to point out what is meant by the concept of "transition" and how, within the Zimbabwean context the period of transition is bound to have serious contradictions inherent in the historical reality in the society and how this will influence not only the law but the character of legal institutions and legal training for a long time to come.
- (3) Third, I will make some concrete observations on the approaches to legal education in the Roman/Roman-Dutch legal traditions in order to demonstrate that the current popular approach to the concept of "teaching law in the social context" in most common law systems is merely adaptations to the old Roman/Roman-Dutch methodology and philosophical outlook. I will also indicate here the similarity between the Roman/Roman-Dutch and the "Law in Context" approaches and that based on the socialist approach as well as the fundamental differences that exist between the socialist and the other two systems. The aim here is to demonstrate that approaches to legal education that entail combining philosophical, political and other institutional variables is not unique to the socialist approach and that they are useful and should be adopted. Further, the aim here is to underline why the socialist interpretation of law and legal phenomena is able to provide the students with a thorough mastery of the legal rules as well as arm them better for the tasks they face in this transitional phase and which demand positive participation by them in perceiving and influencing desirable changes.
- (4) Fourth, and lastly, I will make some synthesis which also try to focus on the general structure and content of legal training as it exists in Zimbabwe to-day and make some suggestions on possible changes that would be useful and beneficial to the needs of society in the transitional phase.

The question of substantive and procedural aspects of the law will be incorporated in all the sub-categories and will not be treated in isolation.

2. Law and Legal Structures as social-historical phenomena under Capitalism and Socialism

Because the openly declared aim of scientific socialism is the abolition of private property in the major means of production in society and its replacement with common ownership and because such private property in the major means of production is the foundation of all societies organised along the lines of exploiter classes and that of the exploited masses which started with the slave-owning society, followed by the feudal society and now by capitalism, the exploiters and those who talk on their behalf have always asserted that socialism wants to destroy all wealth and

also that it is, therefore, a lawless, anarchist social system. Common, socialised ownership of the major means of production of the material basis of social existence is obviously antithetical to private ownership. And, it is not surprising, therefore, that socialists do openly claim, and rightly so, that they are enemies of capitalist private ownership. However, to jump from this basic difference to the point of equating socialist ownership with "lawlessness" is to ignore the very fact that capitalist ownership and the laws that reflect and reinforce it is quite different from those of the slave-owning and feudal societies before it. Socialists do not proclaim the destruction of the basic means of production but rather its liberation from the monopoly of a minority class, the capitalists.

The point I want to put forward here is that every social structure develops laws, legal relations and institutions that are peculiar to it and that this need not lead thinking people to declare such historical differences, particularly the part that one does not agree with, to amount to "lawlessness". At the same time, however, the acceptance of the historical reality that different historical epochs give rise to different and, many times, contradictory and antagonistic laws and legal phenomena does not and should not negate the class essence of the laws and legal phenomena in slave-owning, feudal, capitalist and socialist societies.

It is by recognising the historical basis of law and its basis in production relations that socialism clearly states that laws in all pre-socialist class societies are laws of exploitation, inequality and oppression of the majority working people by the private property-owning class. The ruling classes control the very basis of social existence and the apparatuses of government.

Capitalist judges have often boldly asserted the relations of exploitation, oppression and sub-ordination regarded as natural under the capitalist social relations. Examples in the areas of the relationship between men and women, between employers and employees and between private property owners and those whom they have expropriated and made homeless destitutes (squatters) will suffice to underscore the point. In *Roberts v. Hopwood and Others* [1925] A C 578 (HL) a borough council which had tried to equalise the pay of low grade workers of men and women who performed the same tasks was castigated by Lord Atkinson who said at page 594 of the judgment

The Council would, in my view, fail in their duty if [they] . . . allowed themselves to be guided in preference by some eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes in the matter of wages in the world of labour.

It should be pointed out that since that time the pressure from socialist societies and internal struggles by the oppressed women and other workers have, in capitalist Britain and other developed capitalist societies, led to

legal recognition of the principle of equal pay for equal work for both the sexes although in practice the principle is only partially observed in all capitalist societies.

In *Patchett v. Sterling Engineering Coy Ltd [1955] 72 RCP 50* in a dispute involving entitlement to patent rights to a discovery made by an employee, Viscount Simonds stated (at p. 57) that:

. . . it is an implied term . . . in the contract of service of any workman that what he produces by the strength of his arm or the skill of his hand or the exercise of his inventive faculty shall become the property of the employer.

In the case of *Southwark London Borough Council v. Williams [1971] Ch 734* at 744 the court said, in dismissing pleas by destitute homeless squatters, that:

If homelessness were once admitted as defence to trespass, no one's house could be safe . . . so the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the hungry and the homeless: and trust that their distress will be relieved by the charitable and the good."

Lord Denning applied these harsh words with a lot of pleasure in the squatters' cases of *McPhail v. Persons, Names Unknown and Bristol Corporation v. Ross and Another, [1973] Ch 477* at 455 - 460.

In contrast to the above statements by capitalist judges on the moral basis of the capitalist system and its laws, we have in socialist societies clear legal declarations of legal relations that would sound "eccentric" to the upholders of the principles of inequality under capitalism. For example, in the Constitution of the People's Republic of Mozambique of 1975 it is stated under Article 31 that:

In the People's Republic of Mozambique work and education are right and duty of every citizen.

In the 1977 Constitution of the USSR under Article 40 it is clearly put that:

Citizens of the USSR have the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of their work . . .)

Now, the purpose of the above citations of some of the salient features of the laws under capitalism and socialism is, as I indicated earlier, to demonstrate that both capitalism and socialism have laws that are peculiar to the relations of production predominant in them, to property relations that predominate in them. We as lawyers must recognize the development of laws and legal phenomena historically and honestly without resorting

to uninformed, "unlearned", assertions that one society or the other is "lawless". Also, as I will emphasise later, teaching legal rules and the social relations they express on a comparative basis is superior to the method of hiding behind rules only or hiding knowledge of other social systems and their laws from students of law.

3. The Meaning of "transition", its complex contradictions and implications for legal education

From a socialist perspective, the transitional period is an historically determined scientific category and not merely a figure of speech. Communism is not made out of capitalism or semi-feudal capitalist society the way instant coffee is made or by a switch of the button. A movement from one social formation to another higher formation is characterised by the presence and sometimes the dominance of the old society, and the struggle of the newly emerging one with the old. Different countries have different concrete conditions to confront in the transitional epoch¹ although all socialist movements and vanguard parties share similar Marxist-Leninist principles and goals. It is, therefore, extremely important to dispel the unscientific idealist notion that a classless society is built the moment the bourgeoisie have been removed from political power and the socialisation of the major means of production is undertaken. Lenin makes this point very clear in a piece he wrote in 1919 called "Economics and Politics in the Era of the Dictatorship of the Proletariat" (*Progress Publishers, Moscow, 1978*). The transition period is historically inevitable and this infact carries great dangers for it allows bourgeois and petty-bourgeois reformists to shy away from revolutionary action while at the same time providing the ultra-leftist "revolutionaries" with a weapon with which to claim that those engaged in the transformation are not revolutionary enough!²

In the transitional period the society is still stratified into social classes although all the classes would be undergoing qualitative changes. The working classes would be having political power although sharing economic power with other social classes which themselves would also be undergoing the changes. Within the specific conditions of Zimbabwe the working people have yet to assume dominant political control³ and they are far from having significant control of the economy. To this end we can only talk about the transitional phase in Zimbabwe to-day if we mean the earliest phase which is more of a national democratic phase. The bourgeoisie are still holding effective power. It is through fierce class struggles that qualitative leaps will be made from this early phase to that truly representative of the period of dictatorship of the workers in alliance with the peasantry.

1. K. Zarodov, *Leninism and To-day's Problems of the Transition to Socialism* (Progress publishers, Moscow, 1983) pp 31 - 50.

2. *Ibid* Chapter V.

3. See an interview report on this of Comrade Mugabe, The Prime Minister, in *The Herald*, 17 - 4 - 84.

In the present phase the country is faced with all the ills rooted in the colonial capitalist past. Mass unemployment, poverty, inequality, illiteracy by a large section of the population, housing shortages and poor housing for the working class, inadequate wages for the working class, extreme deprivations of the peasant community in the communal lands who are engaged in small private production, feudalist patriarchal relations which subjugate and oppress women, increased corruption particularly among the petty-bourgeoisie and the bourgeoisie in the process of capital accumulation, racism, regionalism, tribalism, exploitative production relations, economic integration with imperialism bent on creating neo-colonialism and numerous others is the reality of Zimbabwe to-day.

Class struggles fought in the form of legal battles in the courts since independence provide ample evidence of the continued constraints deeply rooted in the racist colonial capitalism. Some remnants of pre-capitalist, pre-colonial oppressive cultural practices which holds down progress towards the creation of a just socialist society devoid of exploitation, inequality, deprivations and obscurantism are also felt. We are all aware of the case of *The Commissioner of Police v. Robert Spence Rensford and The Messenger of Court, Gweru S C 30/84* which was decided by the Supreme Court in March, 1984. Some issues in that case are still being litigated in the courts. The Supreme Court decision which ordered the Commissioner of Police to eject the squatters on the private farm of Mr. Rensford, has already led to a declaration under the Emergency Powers Act (Chapter 83).⁴ Squatting on private landed property has its roots in the 1880s during the inception of colonialism when Lobengula was forced to sign the death-warrant of feudalism in this country by the imperialist capitalists who were seeking new means of production. It has become more of a problem now and will continue to be a problem as long as landed property is privately owned, as long as capitalist production remain the dominant form of production in the country. (The Lancaster House Constitution which is the constitution of independent Zimbabwe, under section 16 enrenches capitalist property relations. It is the supreme law in the country and, as long as the situation remain what it is, the transitional period will remain a long one with continued social contradictions such as those that create squatting. And, the class struggle will necessarily intensify. This is the reality of the transitional epoch which a realistic legal education must reflect.)

Another recent judicial decision by the Supreme Court which shows another form of contradictions we face in this early transitional phase is that of *John Katekwe v. Mhondoro Muchabaiwa, S C 87/84*. We all know that feudalist "Traditionalists" and other supporters of patriarchal relations have all been up in arms against the correct and progressive interpretation of the Legal Age of Majority Act (Act No. 15 of 1982) that was handed down by the Supreme Court. The Supreme Court declared, among other things, that for women who have attained the age of 18 years,

⁴. Emergency Powers (Resolution of Disputes over Occupation of Rural Land) Regulations, 1984, S I 243A of 1984.

(a) their fathers or guardians have no legal right to claim for seduction damages, (b) their fathers or guardians may claim for *lobolo/roora* only with the consent of the women themselves and, (c) there is no legal requirement of consent from the fathers or guardians for such women if they desire to marry. People bent on claiming that women should remain perpetual minors under tutelage of the males (except where voting rights are concerned!) are busy cheating the masses who are not yet politically very conscious of the principles of socialism that socialism is not opposed to oppressive "cultural traditions". In fact there are rumours that Parliament may even attempt to amend the legislation to allow for continued legal and social subjugation of women.

Thus it is clear from the two cases that the transitional phase is a period of complex class contradictions and fierce class struggles and not a classless communist stage. These contradictions will be resolved in the long run through class struggles that sometimes call for various forms of alliances of progressive classes and class strata. Lawyers must be aware of these if they are to perform their various tasks effectively for whatever sides in the class struggles they may choose to serve. Of equal importance is the need for lawyers to be flexible and innovative, to be able and ready to experiment with new ideas and institutions. It is imperative that lawyers understand that the old and the new do exist side by side, sometimes complementarily, and many a time in conflict with each other. Practical experiences in other societies in the transitional phase such as Mozambique bear this out.⁵ As one of the leading Marxist philosophers, Plekhanov, put it:

... in its transitional epochs, when the system of law existing in society no longer satisfies its needs, which have grown in consequence of the further development of productive forces the advanced part of the population can and must idealise a new system of institutions, more in keeping with the "spirit of the time."⁶

Let us keep with the "spirit of the time" without being spiritualists and obscurantists who play negative roles when changes in the interest of the masses are advocated or initiated.

4. **Legal Education: the Roman/Roman-Dutch, bourgeois "Law in Context" and socialist approaches**

Very early in the feudal epoch and late slave-owning mode which characterised the development of legal science in the then Eastern part of the Roman Empire which extended to the Northern parts of Africa,

5. See, Sergio Viera in a talk on 'Jurists for the Building of Socialism,' in A. Sachs (ed.) *Principles of Revolutionary Justice* (London, Mozambique, Angola and Guine Information Centre, 1979) pp 11 - 17; A. Sachs, "Mozambique: The Survival of Legal Doctrine in a Revolutionary Society", (1979) 7, *International Journal of Sociology of Law*, 31 - 36.

6. G. Plekhanov, *Selected Philosophical Works*, in Five Volumes, Vol. 1. (Progress Publishers, Moscow 1977) p. 609.

The Institute of Justinian (November 21, A D 533) boldly proclaimed that:

Justice is a set and constant purpose giving to every man his due.

1. Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust . . .
2. The precepts of the law are these - to live honestly, not to harm another, to give every man his due.⁷

It is common knowledge that the justice and the law which formed the inseparable link in Roman and later Roman-Dutch legal tradition which the Roman ruling classes were idealising here never became a reality because the society they superintended over was a class society based on the exploitation of man by man. In its early phase it was characterised by the legal ownership of man by man. What is important for our present discussion, however, is the theoretical unity the Roman legal tradition developed between law and justice. This has survived to the present time in the Continental European approaches to the study of law which is undertaken inseparably with political and philosophical studies,⁸

Another tradition characterising the study of law in the legal systems that developed out of the Romanist practices which is of relevance to our discussion is that of assigning to the universities a leading role in the formulation of law in accordance with what the universities considered to be the basis of justice in society.⁹ This naturally transferred itself in legal practice as university law graduates assumed the various law related roles in the society.

The point to be derived from this brief summary of the Romanist approaches to the concept of law and its development and teaching is that the negative criticisms that are to-day being levelled at the University that it is deviating from the normal traditional approach to the study and teaching of law are completely misplaced and dishonest. The teaching of law from the Romanist tradition which we have inherited from the colonial past and which the Constitution enjoins us to look to (Section 89) clearly shows that the law should be seen in a wider social and political context. Also the Romanist tradition accords the University a leading role in the development of legal, political and philosophical world outlooks. These are what we are attempting to do openly.

The countries with common law traditions which had lesser Romanist influences have to-day increasingly recognized, even from very liberal perspectives, that law should be taught "in context". In other words, the teaching, study and application of the law should take account of social, economic and political phenomena in society. This move, which started in the 1960s was recently succinctly put by a distinguished pannel of scholars who said that:

7. Book I, Title I, *On Justice and Law*.

8. G. Samuel, "Roman Law and Modern Capitalism", (1984) 4 *LS*, 185-210, at 185-192;

9. R. David and J. Brierley, *Major Legal Systems in the World*, 2nd Ed. (London, Stevens, 1978) pp 31 - 141.

We support the view that it [law] is best studied in context.¹⁰

Already there are several reputable journals adopting the law in context approaches such as the *British Journal of Law and Society*, *International Journal of the Sociology of Law*, etc. and publishers of legal books on diverse subjects have some series on "Law in Context" such as Weidenfield and Nicolson of London.¹¹

The gap between the Romanist and Common law approaches to the study and conceptualisation of law is narrowing. What we may gather from this is that the teaching of law in its social, economic and political context, is therefore, not a monopoly or an invention of socialism as some uninformed or dishonest persons have tended to asset. *The differences that the socialist approach adds to the teaching of law are those of revealing the class basis, class content and class role of the law and other supportive social structures and ideas.*¹² Scientific socialism also reveals the ideological character of law and legal norms.

It ought to be clear at this point that the teaching and study of law from a scientific socialist perspective does require that one approaches the subject from a clear historical perspective that recognises what the current law is in society as well as where it ought to move to. It, too, must recognise and reveal the social-economic relations which legal rules reflect and reinforce. It, therefore, obhors the falsification of reality and utopiar approaches that only end students in dream land.

From this perspective then, the socialist approach to the study of law employs class analysis and is revolutionary in its interpretation and approach. But it does not merely teach "politics" or "socialism" at the expense of law as some reactionaries have been heard to whisper in some corners. As the Roman/Roman-Dutch and bourgeois "law in context" approaches explained above indicate, the approach of teaching law in the context of politics and philosophy is not new. Those who oppose the socialist approach should openly declare that they are fighting on behalf of capitalism and not to adopt dishonest methods and concealed motives.

5. The Current status of Legal Education in Zimbabwe and some suggestions for Change

Although most participants here are familiar with the current status of legal education at the University of Zimbabwe - which practically has a monopoly on legal education in the country - and, although other contributors will address themselves specifically to matters pertaining to

10. International Legal Centre, New York, *Legal Education in a Changing World: Report on the Committee on Legal Education in the Developing Countries*. (ILC, New York, 1975) p 13.

11. Some of the titles are : R. Eggleston, *Evidence, Proof and Probability*, 2nd Ed., 1983; J. Eckellaar, *Family Law and Social Policy*, 2nd Ed. 1984; R. Crauston, *Consumers and the Law*, 2nd Ed. 1984; and T. Hartley and J. Griffith, *Government and Law*, 2nd Ed. 1981.

12. L.S. Jawitsch, *The General Theory of Law* (Progress Publishers, Moscow, 1981) Chaps. 1 and 2.

the structure of current legal education, it is imperative that I briefly spell out what the position is before directing some criticisms at the same.

The Law Department at the University offers two basic law degrees namely the Bachelor of Law (B.L.) and the Bachelor of Laws, (LL.B.) The B.L. degree is a three year course of academic study (the basic undergraduate law degree) while the LL.B is a one year "post-graduate" professional degree course designed to meet the entry requirements for legal practice. Subject content for the B.L. degree course is as follows:

First Year: (all subjects compulsory) Legal System, Criminal Law, Contract, Roman Law and Roman-Dutch Legal History, Constitutional History and Law.

Second and Third Years: Delict, Property Law (and Land Use), and Commercial Law (compulsory in 2nd Year), Jurisprudence with a dissertation, (compulsory in 3rd year) Company Law, Conflict of Laws, Public International Law, Revenue Law, Family Law, Customary Law, Criminology, Industrial (Labour) Law, Succession Law, Insurance Law, Administration Law.

In 2nd and 3rd years, students are required to read 5 subjects a year. Besides the above list of law courses, 3rd year students may be allowed to select one course offered in other Departments in the University.

Up to 1984, the LL.B. has been a full as well as a part-time course. The student is required to satisfy the examiners in all of the following subjects:- Bookkeeping and Accounts, Civil Practice and Procedure (High and Supreme Courts), Civil Practice and Procedure (Magistrates' Courts), Criminal Practice and Procedure, Evidence, Drafting and Interpretation of Statutes, Notarial Practice, Conveyancing, Legal Aid Practicals.

After being awarded both the B.L. and LL.B. degrees, there is an elaborate procedural system and time lapse required before one is admitted as a full-fledged legal practitioner. The procedures are governed by the Legal Practitioners Act No. 15 of 1981, particularly sections 4 and 5 and Legal Practitioners (General) Regulations, 1983 (Statutory Instrument 124 of 1983), Sections 4 and 6.¹³

¹³. In short, these are as follows:-

1. Notice of the intention to apply for registration as a legal practitioner (L P) must be given to the Law Society (a society composed of registered legal practitioners) not later than 30 days before the application is to be made and the application has to be accompanied by copies of all the documents required and which form a part of the petition for registration. A fee of \$25.00 has to be submitted with the application.
2. Section 4(3) of the Regulations sets out the requirements of the petition which include a certificate to show that the notice was given to the Law Society and that no objections have been made to the application.

3. The petition will contain a Notice of Set Down for a Wednesday (after the 30 days has elapsed) but the petition with the certificate of the Law Society shown thereon (i.e. the original petition) must be lodged with the Deputy Registrar of the High Court (stamped with a \$10.000 Revenue Stamp) and with a letter requesting the Deputy Registrar to place the matter on the roll for the following week, must be filed with the Registry Office at Vincent Buildings (in Harare) or at the High Court in Bulawayo before 10 a.m. on the Monday preceding the application's hearing.
4. A legal practitioner will normally act 'pro amico' for the actual admission at which the prospective L.P. will take the oaths of office and of allegiance. (It is usual to offer a gift e.g. a bottle of wine or such like to the practitioner acting for the prospective L.P.).
5. The order of court requiring the Registrar to place the applicant on the roll of L.P.'s can be lifted from the court, usually the following day, on payment of a \$1,00 Revenue Stamp.
6. A fee of \$5,00 is payable to the Registrar before the name of the new practitioner is entered on the Roll.
7. Thereafter the newly enrolled L.P. is entitled to audience in ANY court except that he is required to comply with the requirement of section 6 of the Regulations (practical experience for minimum of 12 months) before he or she is allowed to practise on his or her own account or as a partner in a firm.

Further, Sections 8 - 11 of the Legal Practitioners Act makes it an offence for anyone who has not passed through this stringent and lengthy pipe-line to have audience in any court, to prepare any documents for registration in the deeds registry, to execute, attest and authenticate any document, to assist anyone to sue, to appear or plead to defend any suit whether civil or criminal and to associate with a registered legal practitioner in any of the above! The only public legal roles that a B.L. or B.L. and LL.B. graduate can undertake independently immediately upon graduation are prosecution in the courts and the magistracy. The latter two roles are interesting in that here the prosecutors and magistrates are recognised to be competent to argue and deliberate over difficult points of law and legal procedures but they are not deemed competent when it comes to other branches of legal practice - *especially private legal practice as a business!* Such is the law reflecting the social and economic relations of professional monopoly of trade. This has obvious disastrous consequences for the mass of the population that cannot afford to buy the services of the full-fledged legal practitioner who is more often than not hungry to join the other 'gentlemen' in their club by charging high service rates.

From the above provisions relating to the process of legal education in preparation for the practice of law, a number of things can be observed. These are:-

- (i) first, that a graduate in law after successfully passing a minimum of fifteen approved courses is still not permitted to offer any professional legal service to private clients or the public;
- (ii) second, that even after passing the professional LL.B. examination which is considered to be "practical" as opposed to the "theoretical" B.L. courses, a graduate is still not permitted to offer any professional legal service to private clients or the public, save under the tutelage of a "master";
- (iii) third, that during their training, which is very costly to the producers of wealth, the workers and peasants, the B.L. and

LL.B. student is forced to keep in cold-storage the knowledge of law in many areas that could be utilized beneficially by the public on a continuous and progressive way if the legal rules regarding authority to offer legal services were relaxed and if the curricula was transformed so that a mixture of practical and theoretical (substantive) courses were provided as well as actual practical community legal work within the curricula.

It is my opinion that the current structure and ideology underlying the process of legal education in Zimbabwe is designed to produce caricatures of the elitist "English Gentleman" who serves the interests and satisfies the image of the minority ruling classes rather than the working people. It is the working people who produce wealth in this country, including the monies used by the big capitalists to pay taxes. The declared policy of the ruling party to lead Zimbabwe towards a socialist transformation demands that we dismantle the existing structure of legal education and in its place build a people oriented system of legal education. This requires structural changes as well as changes in the content of the courses.

I will not go into the details as to the content required in the courses except to say that a deliberate policy to increase the level of scientifically correct dialectical materialist interpretation of law and legal phenomena is imperative. At the moment, because of the colonial inheritance, idealists, who interpret social and natural phenomena, including law, from the bourgeois world outlook are still in the majority among the staff and this will persist for quite some time. This should be recognised as a temporary problem inevitable in this early transitional period in Zimbabwe. Efforts should be made to ensure that idealist approaches to the teaching of law is not allowed to reproduce itself or, worse still, to have a dominating influence.

With regard to the structure of the courses I have already indicated that a mixture of practical or procedural aspects of the law should be given to students starting as early as in their first year at the University. This will ensure that after successful completion of first year, students should be able and be required to engage in practical legal work of benefit to the public that is in need and the process to be continued throughout the length of their training. This will make the division between the B.L. and LL.B. superfluous. I suggest, and many of my colleagues share this view,* that the B.L. and LL.B. should be merged into one degree course of four years. After completing the newly integrated degree course, a graduate should be able to practice the law in most fields independently. A few of the courses, if any, not covered within the four years but which require further training can then be pursued by those interested. The twelve months post LL.B. tutelage under the "masters" should be abolished. Its major function now is to mystify legal practice and to allow established legal practitioners to exploit the services of the new graduates while at the same time grilling them into the elitist bourgeois and petty-bourgeois social values and culture.

It is clear from the foregoing that the accusations generally levelled at the University that it produces law graduates who do not have a mastery of "practical legal work" is true. But, the blame is to be shared between the University, which has power in re-structuring its curricula to make it more relevant to the development needs of the country, and the legal profession which is jealously interested in the continuity of the monopolistic laws designed to keep the profession small and hence profitable to the "chosen few" who are in it. General litigation, provision of legal advice under supervision of experienced lawyers and most conveyancing can easily be grasped and practised by law students if they are taught and allowed to do so. In short, the thrust should be towards producing public service oriented lawyers with sufficient competence to handle private practice and not the other way round.

Lastly, in restructuring the training of lawyers at the University, corresponding changes ought to be made so that people have guaranteed right to free legal advice and representation in civil and criminal matters and not the current ineffective *Pro Deos, In Forma Pauperis* and the hypocritical "due protection of the law" as provided under section 13 and 18 of the Constitution. These have little real significance to the ordinary worker or peasant whose income cannot afford to buy the services of the expensive legal practitioners. Already the recent *Annual Review of Manpower* (1984) prepared by the Ministry of Labour, Manpower Planning and Social Welfare, is predicting that with the current status of the availability of jobs, the University will not be expected to expand its intake of law students in the next two years! (p. 64 of the A.R.M). This is a reflection that under capitalism there is dependence on market forces in allocating lawyers and making them accessible to those who can afford them as opposed to those who need them. Millions need legal services but cannot afford them. This is a serious challenge to the state in this transitional phase and serious thought must be given to it so that university legal education, the legal profession and the judicial structures can be overhauled to reflect the needs of the working people and not these of the few bourgeoisie and petty-bourgeoisie.

The *Transitional National Development Plan*¹⁴ talks about the "decolonization" of the legal system, the transformation of the Constitution and jurisprudence and of creating conditions where ordinary people will have access to legal justice at minimum cost. All these are noble goals and they would affect both the substantive and procedural aspects of the law. They, however, require vigorous efforts and bold actions in line with socialist goals. So far, not much has been done in the direction of achieving these goals and there is a clear danger that the old order is firmly and resolutely struggling to resist any changes and in effect may very likely reproduce itself.

I hope those observations I have advanced on various aspects of the subject will help us in the discussion.

* See, for example K. Makamure's paper, "Proposals for a Four Year Degree Course", Department of Law, 1983.

¹⁴. 1982/83 - 1984/85, Vol 2. May 1983, at pp 40 - 43.



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