LEGAL EDUCATION
FOR
SOCIAL CHANGE

MARIO GOMEZ
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INTRODUCTION

The law is in deep crisis. This crisis is reflected in the growing public disenchantment with the law, its processes and institutions. Perhaps at no other time has there been so much public disenchantment with the legal system. This disillusionment with the law is not confined to Sri Lanka alone but is apparent across most of the South.

The effectiveness and equity of a legal system can be judged by the nature of its response and the access the
bulk of the population have to its justice mechanisms. The nature of the response would include the speed at which the system responds and the nature of the remedy. Both with regard to access and also with regard to the nature of the response, the Sri Lankan legal system falls far short of expected norms.

In Sri Lanka we are plagued by lengthy delays and by a public perception that quality legal services are available only to a select minority. Litigation in most cases drags on for years and it is clear that inadequate attention and resources are being channelled for those in the low income brackets. There is also the public perception that a remedy when it comes, offers too little or is not appropriate to meet the suffered injustice.

Perceptions of inaccessibility are heightened by the 'language of the law'. In its formal and stylised discourse and the use of an alien language (English) the law has tended to isolate itself even more from the community.

The purpose of this monograph is to look at legal education against the backdrop of the large-scale public disillusionment with the law. It looks at the manner in
which the Sri Lankan legal system trains its lawyers and also explores some avenues of reform. It also looks at legal education against the backdrop of an imposed legal system and a failure of legal professionals to respond to the inequalities and injustices created by colonialism. It is hoped that this would generate debate and provoke discussion with regard to legal education in the country.

The current moment is a moment of great ferment with regard to legal education in the country. Sri Lanka’s newest institution of legal education - the Open University - has only recently begun to produce its first law graduates. The country’s two other institutions - the Law College and the Faculty of Law - are in the process of reviewing and re-examining their course content, teaching methodologies and assessment methods. It is hoped that this monograph could make some contribution to the debate that is now taking place.

The approach adopted is to look first at some historical attitudes to legal education. Legal education was very much part of the colonial project and has been influenced profoundly by the colonial experience. The competing issues of democratisation and excellence are then looked
at. How has post-colonial Sri Lanka sought to reconcile these two tensions? A look at the teaching approaches and curricula of the three different institutions of legal education are then considered after which questions relating to language are also examined. Finally a broad framework for legal education in Sri Lanka is suggested.
LEGAL TRAINING

Most legal systems - as we now term them - make provision for the training and instruction of personnel to operate the system. Almost all major legal systems in the world operate on the assumption that a specially trained body of people is needed to run and maintain the system.

This of course creates a power relationship. It at once creates a body of persons with specialised knowledge and skills and a body of persons without this knowledge and skills. It becomes then the responsibility of the legal system to ensure that this power relationship is not abused. While one of the functions of legal education is to give its students legal knowledge and skills, it is also important that legal education attempts to prevent an abuse of this knowledge and skills.

The focus of legal education in Sri Lanka for the past 150 years or so has been on training people for the 'practice of law'. Legal education has sought as its major
objectives, the production of a group of people who are equipped with the skills and training to litigate in a traditional court of law. Legal education has been shaped by the belief that most of its products would end up practicing in a court of law and therefore the education imparted should prepare them for this.

This focus of legal education is largely built around the inherited legal tradition of Sri Lanka, which is Anglo-Saxon and positivist. The courts were the centre of the universe to the positivist lawyer and the training that was imparted was therefore one to equip the lawyer to function in this world.

Thus the Sri Lankan system of legal education has been one essentially concerned with producing 'pleaders' for our courts of law. This attitude is reflected within the legal community. The legal community contains a hierarchy, with practitioners on the top end of the hierarchy, academics and other lawyers employed in the private sector, and legal activists at the bottom of the scale.
LEGAL EDUCATION FOR SOCIAL CHANGE

II

COLONIAL ATTITUDES AND APPROACHES

Legal education was viewed as the vehicle through which the values of an anglicized legal and political order were to be instilled into the indigenous elite. The emphasis accordingly, was not limited to the acquisition of skills but included an education in the classics and the liberal humanities. The period of tutelage was further directed towards socialising the apprentice in the values, traditions and folk ways of a learned profession. [Tiruchelvam: p.113]

The experiences of Sri Lanka are no different to many African, Latin American and other Asian countries. Sri Lanka went through over four centuries of colonial rule, first under the Portuguese, then under the Dutch and British.

One of the consequences of colonialism was the imposition of an alien legal system and marginalisation
of the indigenous laws. The legal system was also used to legitimise the processes of exploitation that took place under colonialism.

The legal profession has always enjoyed a high social status in Sri Lanka, as it has in most ex-British colonies. It was, and is still considered one of the more lucrative of the professions. It also provided its members with access to political power. Several of the members of the country's political elite have been lawyers. Even under the British, the colonial government chose lawyers to fill the nominated positions in the colonial legislature. [Samaraweera (1985) p.102]

In the early part of this century it appears that law was a more sought after profession than even medicine and the civil service. An English language newspaper, the Times of Ceylon, noted in 1864:

\[
\text{Divinity, Law and Medicine are universally acknowledged as the three learned and leading professions; and their accredited followers are therefore accorded a high social rank and status.}
\]
This view is supported by Samaraweera. He argues that 'law provided the greatest social and economic rewards to the English-educated' and cites a nineteenth century writer to the effect that 'of all undertakings where brain is capital, this is the best'. [Samaraweera (1987) p.7]

Moreover, till the establishment of the University College in 1921 law and medicine were the only professions which had in force formal methods of training. Mobility within the profession was relatively easy and some of the higher legal appointments, including appointments to the Supreme Court, were accessible to Sri Lankans.

Sir Harry Dias was the first Sri Lankan to be appointed to the Supreme Court, and the Court had at least one Sri Lankan on the bench for the most part of the late 19th and early 20th centuries. The Attorney General's post though was almost inaccessible to Ceylonese. It was held only twice by Sri Lankans in the 19th century. [Fernando] The post of Solicitor General, on the other hand was held almost exclusively by Sri Lankans.

**Legal education under colonialism** was more than just providing a student with the skills and crafts to go into
practice. It also included an education in the classics and humanities and was also an instrument through which 'the values of anglicized legal and political order were to be instilled into an indigenous elite'. [Tiruchelvam: p.113]

The positivist approach to law and jurisprudence that was developed by people like John Austin had great appeal to the colonial project. As Smith notes:

*The British, perhaps drawing a lesson from Roman history, had learned very early in their colonial expansion that political domination could be achieved largely by imposing a foreign legal system, without substantially altering the indigenous laws of a colony, and this technique was applied to Ceylon as well. [Smith: p.115]*

The positivist would argue that the legal system is a closed, gapless, rational and comprehensive system. To the positivist, law and its processes are logically consistent and there is always a single answer to problems thrown up by the law. Positivists also tend to suppress the real issues and hide behind a facade of semantics.
This legal culture had great appeal to the British colonial regime. The British were not unaware of the importance of the law in legitimising the processes of exploitation under colonialism. They needed a system that would mask the true nature of colonialism and at the same time provide legitimacy to their continued presence.

III

THE EMERGENCE OF THE MODERN LEGAL PROFESSION

The political role of the lawyer is a universal phenomenon. In the case of a lawyer his profession as lawyer seems to be particularly effective in defining his extra-professional role as a politician. The lawyer is evidently expected to do political things that are not part of his function as lawyer but are expected of him simply because he is a lawyer. [Cooray citing Eulau and Sprague: p.145].
But if he (the lawyer) consistently fails to respond to this challenge and to look beyond the frontiers of his own chambers, he and his fellow lawyers might well find themselves swamped by the contemporary historical forces into comparative oblivion. [Former Secretary to the Ministry of Justice (1970-77) Nihal Jaywickreme quoted in Cooray: p.149]

The legal profession has historically been an active participant in the processes of social and constitutional reform in the country. The struggle for independence from the British was a struggle that was led by the elite and the legal profession was very much in the forefront of this struggle. One of the attractions of the legal profession in the late nineteenth and early twentieth century was the independence it gave. This independence also meant that the members of the profession could be more articulate and forceful in their expressions of dissent against the colonial regime.

Law and politics have always been closely allied in Sri Lanka (as it has been in several parts of the world) and this alliance was particularly strong in the early part of this century. As Fernando notes, 'the Ceylonese lawyer
of the early decades of this century was by definition a potential politician'. [Fernando: p.61] Of the 82 persons who signed the 'Sinhalese Memorandum' in 1915, 48 were lawyers. The 'Memorandum' protested at the methods used by the British regime in dealing with the communal riots of that year. And of the 37 office-bearers in the Ceylon National Congress - which led the struggle for independence - 26 had legal qualifications. [Cooray citing Roberts: p.146]

Furthermore, cases such as the Bracegirdle Case - argued by the later doyen of the Sri Lankan bar H V Perera - shook the credibility of the colonial regime and contributed to its demise.

Unfortunately, in the four decades since independence the legal profession has failed to play the activist role it played earlier on. It has not been in the forefront of the struggle for social and distributive justice and equality. As an institution of civil society is has failed to address itself to some of the fundamental problems and dilemmas faced by post-colonial Sri Lankan society. This failure no doubt is related to the education lawyers have received and any attempt at reforming the system will have to
address this question. To be able to train practitioners effectively, legal educators need to have a conception of the lawyers' responsibilities and tasks.

This passive role has also contributed to the skepticism and cynicism that the public show towards lawyers. The members of the profession have refused to acknowledge that they have social responsibilities to perform, whether it be with regard to legal aid or to other areas of political, social and constitutional reform.

Recently, though, there have been some signs that the legal profession is beginning to see a larger role for itself. A steady erosion of some fundamental political and democratic rights over the past two decades, a huge increase in human rights abuses, a steadily worsening ethnic conflict and growing levels of violence have served as catalysts. The response of the legal profession, among other things, has included an expansion of their legal aid programme and a programme which has had as its focus the unprecedented number of political detainees in the country.
While these trends are to be welcomed, it is also necessary that law schools address themselves to questions of social and professional responsibility. The sense of professional inertia is a reflection of the education imparted.

The Charter of 1801

Although 'lawyers', in a broad sense, existed during the Portuguese and Dutch colonial regimes, it was only after the British conquest that the profession became formally established. The Charter of Justice of 1801 authorized the practice of law by professional pleaders in the Maritime Provinces, which the British had captured from the Dutch in 1796.

Lawyers primarily appeared in the Supreme Court, until the reforms of 1833. The Sitting Magistrates's Courts - which were the courts most accessible to the people - were not accessible to lawyers. The British concept of a divided profession existed even then, though one could practice both as a proctor and an advocate. Proctors were permitted to practice in the Provincial Courts, the second tier of original courts. It appears that most litigants
pleaded their own cases, sometime assisted by 'friends'. [Samaraweera (1987) p.1] The Kandyan Kingdom, which was ceded to the British in 1815 was governed separately and professional pleading was not allowed.

The Supreme Court had no control, until the reforms of 1833, over the lower judiciary except in criminal law matters. The Governor was responsible for the control of the lower judiciary. The Supreme Court exercised control only over those lawyers who appeared before it.

The Charter of 1833

The Charter made dramatic changes to the administration of justice in colonial Sri Lanka. It unified the administration of justice and the Supreme Court became responsible for the admission of attorneys-at-law, both proctors and advocates. However, a person was prohibited from practicing as both a proctor and an advocate.

Under the Charter, the Supreme Court had the power to admit and enrol advocates and proctors of good reputation, competence, knowledge and ability.
Examinations were sometimes personally conducted by the judges of the court. Advocates were required to have a knowledge of Roman-Dutch and English law and also be proficient in the 'classical attainments and the general principles of a liberal education'. Proctors were required to be familiar with the rules of court procedure and the 'usages of the part of the country in which they intended to practice'.

The division of the profession into advocates and proctors also created a hierarchy within the profession. Advocates had greater prestige and status than proctors, and had also, unlike proctors, obtained their education in England. However, it was open to proctors to qualify and then practice as advocates.

During the second half of the nineteenth century legal education became more formalised. This period is also marked by the system of 'apprenticeship' that already obtained in England. Law 'pupils' apprenticed for some years with a 'master' and armed with a certificate from their master, they presented themselves for an examination conducted by the Supreme Court. 'Pupils' had to pay the master for this period of apprenticeship
and the instruction they received. They were also prohibited from engaging in any other trade or business during their period of training.

The early law teachers in colonial Ceylon were practicing lawyers and the focus of their instruction was on common law principles and procedure, drafting skills and other aspects of courtcraft.

The system of apprenticeship also bred in the future lawyer a certain passivity. The apprentice was merely concerned with learning the requisite skills. Legal reform, the role of the lawyer and other such questions were not concerns which troubled the mind of the law student. This passivity unfortunately continues to plague the modern system of legal education.

The system of apprenticeship was something peculiar to the common law system at that time. Till 1826 and the establishment of the University College at London, legal education was conducted in this manner in England. [Lloyd and Freeman: p.3]
The civil law tradition, on the other hand, had long established universities for the teaching of law. They also encouraged a philosophical and academic approach to the study of law unlike their common law counterparts. Kahn-Freund argues that the British tradition, which emphasised 'authority', eroded the critical faculties of law students in that country. [Lloyd and Freeman: p.3]

The Council of Legal Education

The Council of Legal Education was established in 1874. No fundamental change was made with regard to the admittance of lawyers and control was retained with the Supreme Court. However, the establishment of the Council provided for the first time that formal lectures be delivered by one of its members. Students had to follow at least three courses of lectures 'on Jurisprudence, including International Law, and on Roman Law'. [Goonesekere: p.859]

The Courts Ordinance was passed in 1889. This Ordinance contained rules for the admission of lawyers based on a scheme prepared by Ponnambalam
Ramanathan, a member of the Council of Legal Education.

The rules required a student to pass a preliminary examination to test his (mostly at that time) competence to study law. The study of law then took three years after which the student was required to pass two examinations in Jurisprudence, Law of Persons and Property, International Law (Advocates), Obligations, Evidence, Civil Procedure and Pleadings, Criminal Law and Procedure and Bankruptcy and Administration. [Goonesekere: p.859]
The post-colonial period of legal education in the country (post-1948) is marked by a tension between the conflicting goals of democratisation and academic excellence. How does one balance the competing interests of social equity and the need to maintain standards?

Legal education has clearly become more widely available than it was two decades ago. This is due to two major political decisions taken in the early sixties and early seventies. The first was to teach law in three languages - Sinhala, Tamil and English. The second was to admit 'external students' to the Faculty of Law at the University of Colombo.

Democratisation has demanded that people be educated in a language they are familiar with. The public perception of law as elitist has been heightened by the
language factor, because the legal community has functioned for the most part of this century in English.

Although changes in the medium of instruction has made legal education accessible to segments of the population that had hitherto been excluded, yet a quality legal education continues to be available only to those competent in English. So while the opportunities for legal education have been democratised, a sound legal education still remains the privilege of a small class.

Sri Lanka is different from other Commonwealth and Third World countries in one major aspect. It is one of the few, if not the only jurisdiction in the world, which provides legal instruction in three languages - Sinhala, Tamil and English. This factor has sometimes prevented changes which could otherwise have been made.

External Students

Because of the demand for legal education, and because of the inadequate resources within the university, the Faculty of Law took a decision to permit ‘external’ students to sit their examinations. No tuition was offered
to these students by the Faculty, but the external students sat the same examinations and obtained the same degree as the internal student.

Initially the response to sit as an external student was not very strong. However, after Sinhala and Tamil were also introduced as languages of legal education, the number of external students increased dramatically.

External students have had to rely on private tutions for instruction or indulge in self-study. In the early eighties the Faculty initiated a programme to provide limited tuition to external students in the evenings. There was a massive response. The Faculty justified this decision on the ground that the monies raised from this project would supplement the meagre earnings of university lecturers. However, after prolonged protests from the student body, the programme was abandoned. The student body argued that if the Faculty had the time and resources to teach additional students, it should increase the limited intake at the Faculty.

After the establishment of the Open University (whose function it was to cater to the 'employed student'), the
Law Faculty took the decision to phase out the external programme. Around 10,000 students took advantage of the last opportunity to register as external students. Because students are given three attempts at each examination, the Faculty must continue holding examinations for several years more.

The performance of external students is extremely poor. Most of the students are those in the middle level of government service or the private sector and view the law degree as a vehicle of career advancement.

However, it is of interest to note that one of the pioneering legal works in swabasha ‘Essays on the Legal System’ by Kohana and Mendis, was written by two lecturers at a private institution providing instruction to external students. This work appeared prior to any other piece of swabasha literature produced by either the Law Faculty or the Law College. [Cooray: p.127]

There is now a move within the Faculty of Law to revive the ‘external system’ and to begin to accept new registrations from external students. The massive registration of around 10,000 students has taxed severely
the small resource base of the Law Faculty. Reintroducing the 'external system', it is argued, would make the number of external students more manageable.

The Medium of Instruction

Till 1968 competence in Latin and English were prerequisites for the study of law. The insistence on a knowledge of Latin was because of the Roman-Dutch antecedents of Sri Lanka's imposed legal system. However, as a result of the growing volume of literature in English, the requirement of a knowledge of Latin was dispensed with.

Legal education nevertheless was conducted in English till 1970. In the seventies, as a result of a political decision taken by the Sirima Bandaranaike regime, legal education began to be available in Sinhala and Tamil as well. The decision to teach law in the three languages was part of a much larger strategy undertaken by the then-political regime. This included the replacement of the Soulbury Constitution in 1972, the fusion of the bar in 1974, and other statutory and procedural laws which had as their laudable objective, the creation of a legal
order appropriate to the Sri Lankan social ethos. At the forefront of the changes was the then-Justice Minister Felix Dias Bandaranaike, a London-educated lawyer and part of the ruling aristocracy.

In August 1970 the Minister of Education issued a directive to the University of Ceylon to begin teaching law (and science and medicine) in Sinhala and Tamil. The directive also provided that Sinhala students must follow lectures in Sinhala, and Tamil students in Tamil. Those of mixed parentage had a choice. However, the university provided permission to modify the directive and the latter part of the directive was not followed. Students thus had the choice of following lectures in English (despite their ethnic background) and answering examinations in English.

The decision to teach in swabasha was resisted by those on the staff of the Faculty of Law at that time. The staff met the Minister in an effort to first reverse the decision, and failing that to postpone the decision by a few years. Both efforts failed.
Mark Cooray, who was on the Faculty at that time, recounts:

While on the one hand the difficulty of teaching without legal materials in swabasha was obvious, yet it is also true that legal educationists themselves did nothing to prepare the groundwork for the eventual switchover. This inaction had the effect of delaying the eventual switchover, but when it did come, there was an almost total state of unpreparedness. [Cooray:p.125]

At the Law College a policy of bilingualism has been followed since early January 1971. Some subjects are taught in Sinhala/Tamil and some in English. However, students may sit the examination in any of the three languages. This is different from the University where the same course is taught in Sinhala, Tamil and English and the student may opt to take the examination in any of these languages.

Law had earlier been taught in Sinhala at the Vidyodaya University from 1965. A Law Department was set up at the university to service the needs of other Faculties.
Those enrolled in the Arts and Commerce Faculties could take law as a subject. A pioneering work on commercial law was also the result of the Law Department at Vidyodaya.

V

LANGUAGE AND DEMOCRATISATION

In terms of democratisation, more important than the decision to permit external students was the decision to permit instruction in *swabasha*. A 1977 study showed that with regard to the universities, the socio-economic background of entrants had altered significantly when compared with statistics from the period soon after independence. [Jayaweera] This is true not only of legal education but of university education in general.

Jayaweera notes that 'more segments of the population (now) have access to university education than in the years immediately following political independence'.
This seems to be confirmed by the most recent statistics released by the University Grants Commission. [Statistical Handbook 1989 (1991) University Grants Commission, Colombo]

A similar trend is apparent in the private Law College. Although education is not free, the student composition is more heterogeneous than it was in the fifties and sixties.

Indraratne too records the phenomenal increase in Sri Lanka’s university population. From 904 students in 1942 - when university education began in this country - the university population ballooned to 14,000 in 1966 and almost 30,000 in 1988. [Indraratne: p.21]

With regard to the participation of women in legal education, Sri Lanka shows encouraging figures. In 1967, 45 per cent of those studying law in the university were women. However, in 1989 out of a total of 187 students admitted to the Faculty of Law, as many as 115 (61.5 per cent) were women. [1989 UGC Handbook, p.46]
Sri Lanka has currently three institutions of legal instruction - the Sri Lanka Law College, the Faculty of Law, University of Colombo, and the Law Division, Open University.

The Law College

The Law College is the oldest of the three institutions and is managed by the Council of Legal Education. The Council of Legal Education was set up in 1874 to oversee legal education in the country. By 1911 the Ceylon Law College had been established at its present site in Hulftsdorp in Colombo, adjacent to the Supreme Court.

Students seeking entry to the Law College must have four passes at the GCE Advanced Level Examination (higher secondary level) and are also required to sit an entrance examination. The entrance examination has two papers.
- one, a general intelligence paper and the other, a language paper.

At the Law College, students follow a three-year course. The course aims at giving them a broad exposure to the major areas of law. At the end of three years and a six month period of apprenticeship with a senior lawyer, a law student may seek admittance to the bar. Lectures are conducted almost exclusively by practitioners and till very recently there were no permanent staff. Recently, however, the College has begun a process of recruiting permanent staff and the salaries being offered are slightly higher than that of the permanent staff at the state-funded Faculty of Law.

The Faculty of Law, University of Colombo

The Faculty of Law was initially set up as a department in the then-University of Ceylon. It now forms one of the six faculties of the University of Colombo and is situated in the country’s capital. Sri Lanka has nine universities, all of which are funded by the state, and education from the primary to university level is free.
Entrance to the Faculty of Law is based on the student’s performance at the Advanced Level examination which is held after about two years of higher secondary education. Of the students that qualify for university entrance in all subject streams, only about 20 - 25 per cent are admitted to the formal university system. The annual intake to the Faculty of Law is about 200. However, till about 1982 the annual intake was about 50 students. This was primarily because of inadequate physical resources.

The Faculty of Law initially offered a three-year course leading to a Bachelor of Laws degree (LL.B). However, beginning in 1984, the number of subjects taught was expanded and the degree was extended to four years. Students not competent in English were also required to attend lectures and sit an examination in English. This was another factor for expanding and extending the duration of the course.

Graduates of the Faculty of Law who wish to practice are required to enter Law College and sit the final examination. They are exempted almost entirely from the preliminary and intermediate examinations of the Law College.
The Law College conducts its examinations twice a year and it is therefore possible for the graduate to take the bar examination within six months of completing his or her degree.

A period of six months apprenticeship with a senior lawyer is required prior to a person being admitted to the bar.

The Law Division, Open University

The Open University is the most recent institution of legal education and a few years ago produced its first batch of graduates. Its curricula are the most progressive of the three institutions. While setting up and operating a new institution is no doubt an extremely daunting task, it illustrates the fact (as the National Law School in Bangalore has also done) that if one is concerned with reforming the system, it may sometimes be easier to set up a new institution than reform an existing one.

The Open University was set up in 1980 with the objective of further democratising educational opportunity through the use of distance education and other similar
programmes. It was set up to cater to those in employment and those who wished to make a late entry into the university system.

Its law programme is also of four years duration and graduates from the Open University receive the same exemptions granted to Law Faculty graduates by the Law College. Contact hours with staff are kept to a minimum and lectures are mostly conducted during weekends and after regular working hours. The Open University also uses audio and audio-visual programmes as part of its teaching methods.

The Open University has attracted working students with diverse backgrounds from both the private and governmental sectors. Legal education is seen by these students as a means of mobility in their career and even as a means of acquiring economic independence by entering the bar.
RATIONALISATION OF LEGAL EDUCATION

Given the limited resources of a small country, the duplication of programmes of legal education and the basically dual structure of academic and professional training may well be seen as a luxury. [Peiris and Goonesekere: p.12]

The current structure of legal education has not promoted the use of law as an instrument of change. The current system has given rise to the view that there exist two types of legal education - one with an academic approach to law and the other with a practical or professional orientation.

As early as 1923 the then-Chief Justice Sir Anthony Bertram made a call for legal education to be shifted to a university setting. This proposal was accepted by the then-Council of Legal Education but it went back on this decision several years later.
In 1972 the Osmund Jayaratne Commission considered suggestions for altering the current structure [Peiris and Goonesekeere: pp.11-12]. However, the majority of the members did not agree and the conclusion reached was that the current structure should continue.

There is an urgent need in Sri Lanka for the rationalisation and the re-organisation of the institutional structure of legal education in the country. However, there are no signs that this is likely to occur in the near future. The distinction that now exists between an academic and a professional education should be abolished. An endeavour should be made to provide every law student with a core education which will enable him or her to straddle both the academic and the professional worlds.

This dual structure has also acted as an impediment to curriculum reform, especially in the Faculty of Law. Graduates of the both the Faculty and the Open University must sit the Final Examination at Law College before entry into the bar. This has meant that when changes are contemplated at either of these two institutions, consideration must also be given to the
response of the Council of Legal Education, which administers the Law College. Thus changes which may be considered appropriate at these institutions are not introduced because it may require their graduates to sit an additional subject as part of their qualifying examination for the bar. This factor has impeded the development of these institutions, especially the Faculty of Law.

VIII

CURRICULUM DEVELOPMENT

The substance and the content of the courses taught at the Law College and the Faculty of Law have remained largely immune to the political, economic and social changes that have taken place in the country and the rest of the world. Subjects are still taught in very broadly in the same categories that they were thirty years ago.
However, it appears that this state of affairs is set to change. At both these institutions there is now great ferment with regard to the question of reform. Both institutions are re-examining their course content, teaching methodologies and in some cases even their methods of assessment.

The Council of Legal Education which is responsible for the Law College, has recently come up with a set of reforms aimed at substantially revamping the system at the Law College. The reforms include the introduction of new subjects like environmental law, hitherto not taught in any of the institutions of legal education.

One of the recommendations of the Council also flows from a recognition that there are now a substantial number of legally trained persons not involved in court practice, but working in other areas. The Council has also recommended the recruitment of permanent lecturers and the formulation of course material which students are expected to read before they enter the lecture room. Some of the proposals though have run into opposition, specially from some members of the junior bar.
At the Law Faculty too, there is a process of review underway. Human Rights law was introduced as an option in the final year from the academic year beginning April 1992. A second subject in Constitutional Law, which deals with comparative aspects and the question of devolution and local government, has also been introduced as a compulsory subject for the second year of study. The Commercial Law syllabus has also been revamped to take account of the radical changes taking place in the Sri Lankan and global economy. Environmental law is being introduced as an optional subject in the final year from July 1993.

Other changes being contemplated include the introduction of a new subject on law and medicine, the revamping of the legal history and legal systems course, and the introduction of an optional research paper in some subjects.

The Open University has been more courageous with regard to its course content and assessment methods. It has discarded some of the traditional classifications of subjects in favour of a more rational classification, and has also attempted to give students a practical exposure.
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Further, it has also attempted to develop the research capabilities of students with the use of small research papers in some areas.

Post-Graduate Studies

The Faculty of Law has been offering research Masters and Doctoral degrees. A few years ago it embarked on a Coursework Masters programme of one year. This has been offered in areas of International Law, Public Law and Evidence. The Coursework Masters has attracted judges, practitioners and others employed in the private sector. However, there is a very big drop-out rate. In the academic year 1991/92, out of 45 students, only eight took up the examination. Students who follow the Masters programme are also required to submit a research paper of approximately 15,000 words and sit an examination.

An attempt at introducing a diploma programme in Private Law did not draw the anticipated response and the idea has now been shelved. However, during the academic year 1991/92 the Faculty conducted diploma programmes in Industrial and Insurance Law at the
request of the Bar Association. A diploma programme in International Trade and Practice drew an excellent response but the course has not been offered again because of a lack of expertise within the Faculty.

In 1992 the Faculty of Law together with the Departments of Political Science and History began offering a Diploma in Devolution and Local Government. A Diploma Programme in Human Rights - aimed primarily at activists working outside Colombo - is being planned by the newly established Human Rights Centre.

IX

TEACHING METHODOLOGIES AND EXAMINATIONS

The teaching techniques adopted in the country have focused on 'feeding' students with information. Students are then expected to 're-produce' this at an examination held at the end of the year. There are very few attempts at stimulating in the student critical and analytical
perspectives or developing a capacity for independent study and research. A senior law lecturer recently observed that 'the re-production of notes at the examination has become the worst form of plagiarism'.

When the Faculty of Law initially began, there was an attempt to imitate the 'Oxbridge' model. Principles were elucidated in the classroom and students were expected to explore the relevant case law in the law library. However, this method had to be abandoned when Sinhala and Tamil were introduced as languages of instruction.

Students who studied in Sinhala and Tamil could not be asked to use the law library since hardly any material was available in those languages. Thus the classroom became, and still remains to a large degree, the sole source of information and knowledge. Classroom time is thus devoted to dictating notes, which the students then faithfully re-produce at the examination.

At the Faculty of Law, note-giving has also become the norm even in the case of those students who study in English. The few students who do read widely and
produce well researched tutorials complain that this does not help them at the examination.

Students are required to answer five questions in three hours, and the 35 minutes per question, they argue, is hardly enough to deal with basic principles.

Students are also assessed (except at the Open University, and here too only marginally) on the basis of examinations. At the Law College and the Law Faculty evaluation is done on the basis of a single examination held at the end of the year. The testing and encouragement of the research capability or practical skills of students does not form part of the curriculum at the Law College or the Law Faculty.

Furthermore, teaching methodologies have emphasised the existing law, accompanied with very technical analyses of the case law. Very few attempts have been made to consider the social, economic, historical and political context of legal institutions and concepts. Nor have there been very many attempts at generating critical skills or considering the limitations of the law.
It is also possible for students to pass examinations without attending lectures regularly. At the Law Faculty this practice has increased over the last two years as a result of the closure of the universities during the period 1987 - 89.

Attendance

Universities did not function during the JVP violence of 1987 - 89. As a result several students sought employment or moved into other careers. Those who had access to financial resources went overseas. When universities re-opened in 1990, several students who had gained full-time employment were reluctant to leave their employers. Neither were all employers willing to give them time off to attend lectures.

Attendance at lectures has thus become sporadic for this category of students. The University of Colombo was forced to relax (in practice) a compulsory attendance rule of 80 per cent. Students relied on studying the photocopied notes of other students by rote and succeeded in passing examinations, some even doing very well. A further consequence of the closure of
universities has been the dual registration of students. Several law students are now registered at both the Faculty of Law and the Law College -although such registration is prohibited by the rules of the university.

Research Option

From the academic year April 1992 the Faculty of Law, in what was a major departure, decided to introduce a research component into its curriculum. Students in Jurisprudence, which is a compulsory subject in the final year, are given the option of submitting a research paper of 5000 words from among a list of topics, in addition to sitting an examination. Forty per cent of the marks will be given on the basis of this research paper to those students who choose to exercise the option. The Faculty is now considering extending this option to other subjects as well.
Legal scholarship has been by and large unresponsive and insensitive to the needs of the country. Indigenous legal literature on matters of relevance to Sri Lanka's social and economic development has hardly ever been produced. Most of the legal literature which has emerged has been doctrinaire and legalistic. Literature on problems such as underdevelopment, ethnicity, access to justice, the structure and nature of the legal profession, the adequacy of the judicial response, and so on, have not been considered relevant topics by Sri Lankan academics. Rather the focus has been on looking at certain substantive areas of the law, classified according to the Anglo-Saxon or Roman-Dutch traditions, and the case law that these areas have generated, sometimes from a comparative standpoint. Even the comparisons have been mostly made with the English and South African (because of its Roman-Dutch background) traditions, rather than traditions like the Indian which are more relevant. Murumba's comment is appropriate here:
In this game the first to get his or her hands on the latest court decision or statute gets the prize: all it then takes to get it published is simply to paraphrase or summarise in the writer’s own words (if that even) the facts and the judgement and perhaps to point out that the decision is consistent or inconsistent with some previous ones. [p. 103]

Few pieces of writing have attempted to examine some of the fundamental concepts and procedures of the inherited Anglo-Saxon system, and to evaluate their appropriateness to the Sri Lankan context.

The literature in Sinhala and Tamil has been limited and generally very poor in quality. Whatever legal literature that has been produced has been mostly in English. This has compounded problems for those not proficient in English.

Apart from problems with regard to substance, there is a need to increase the volume of literature in Sinhala and Tamil, even if they are only translations. Law reporting also takes place exclusively in English. Statutes now come out in the three languages though much of the older
legislation still remains in English. In the seventies there was an attempt to persuade the then-Court of Appeal to deliver judgements in Sinhala. However, this rarely took place.

It was argued at one time that for legal literature to emerge in Sinhala and Tamil, legal education and the administration of justice must be conducted in those languages. It was assumed that then an indigenous legal literature in *swabasha* would progressively emerge [Cooray: pp.58 - 97]. However, this has not occurred and the volume of indigenous literature remains minimal. A concerted effort in this direction needs to be taken by the Ministry of Justice or some other institution of the state. This effort would also have to include a subsidy for publication costs.

Legal scholars attempting to publish are also handicapped by a lack of publishing houses in the country. Very few book publishers are willing to publish legal texts. Most Sri Lankan legal scholars have to look to Indian publishers if they are to produce any legal literature.
We must restrict entry to the profession to safeguard our position and to keep the profession for our children. [A member of the Council for Legal Education quoted by Cooray: p.125]

Legal materials continue to be available primarily in English. Thus those students whose language skills in English are limited, a quality legal education still remains inaccessible. They have to depend to large degree on the lectures delivered by their teachers. The scope for independent study in Sinhala and Tamil is restricted.

Some competency in English is insisted upon by both the Faculty of Law and the Law College, but not by the Open University. Both the Faculty of Law and the Law College insist on a credit pass in English at the GCE Ordinary Level Examination (Junior Secondary Level). At the Faculty of Law this requirement was introduced in the mid-eighties.
University statistics show that there has been a drop in the number of law students from disadvantaged districts in recent years. Peiris and Goonesekere query whether this is a reflection of the 'credit pass in English' requirement. [p.15]

At the Law College applicants are additionally required to take an entrance examination consisting of two papers, one of which has to be in English. At the Faculty of Law students have to sit an examination to assess their competence in English. Students who fail to measure up have to also study and offer English each year. The course in English is conducted by the Department of English in the university and is aimed specially at law students. There is sometimes the case of a student, who having passed all his or her law subjects, has not been able to pass the examination in English. He or she would need to pass in English to obtain the law degree. However, it would be safe to assume that the law student leaves the Faculty with greater competence in English than when he or she first entered.

At the Faculty, where the same course is taught in the three media, most often by three different lecturers,
several problems have cropped up. One is with regard to the maintenance of standards. How does one ensure that students are marked consistently across the three media?

This has given rise to allegations and counter allegations. English medium students complain that since examiners expect them to have read widely before appearing for examinations, their task is made harder. They allege that in the *swabasha* media, the lecturer provides all the required information in the form of dictated notes. It is hard to convince the English medium students that wide reading is an essential part of a law student’s education.

Sinhala and Tamil medium students, on the other hand, argue that they lack access to vital legal material and that gives the English student an edge. They also allege that the English student has a greater chance of getting employment.

There is no doubt though that the English-educated student is at an advantage when it comes to employment. In most cases those proficient in English come from privileged backgrounds. Family and other connections
ensure that when the English-speaking law student passes out, he or she has a wider range of opportunities from which to select.

Teaching in three languages has also meant that a lecturer's freedom to develop a course in a particular manner is restricted. Frequent consultation between the three different lecturers is needed since one examination paper is set. A Sri Lankan expatriate law professor recently argued that this is an advantage, since it prevents lecturers from developing courses based on special research interests and unrelated to student needs.

"Standard English"

There have emerged recently among English scholars in Sri Lanka broader approaches and attitudes to the English language. These scholars have attacked what is commonly referred to as 'Standard English', or the idea of the 'Queen’s or King’s English'. (See, for example, Parakrama, and also Kandiah and Siriwardene cited by Parakrama)
The thrust of their argument is that so long as a person is able to communicate an idea, then even if the idea is not expressed in what may be called 'standard' English, such a communication should be allowed.

This approach has validity for legal studies as well. Examiners would do well not to insist on 'Standard English' in examination answers and tutorials.

The language disabilities of the students may also be reduced by focusing less on memory and more on the linking of concepts and doctrines to social and legal issues that arise in the community. This would require more 'practical' or 'clinical' components to be built in so as to provide an opportunity for students to respond creatively. A system of assessment that focuses less on examinations and attempts instead to develop a student's capacity to respond to legal problems will also lessen the advantages that English medium students currently have.
The language of the law - because of its formal discourse and the use of English - has reinforced the eliteness of the legal system. The system has appeared more inaccessible because of its 'mystique and formality' and the use of a language alien to the bulk of its population.

The Sri Lankan legal system, despite constitutional and statutory changes, continues to function largely in English. [See Cooray for the constitutional and statutory developments: pp.98 -119] The bulk of the legal literature is produced in English and law reporting is also exclusively in English. Statutes, however, now come out in Sinhala, Tamil and English.

Work in the higher courts of the republic - the Court of Appeal and the Supreme Court - takes place almost exclusively in English. Arguments and pleadings are in English and the court order too is delivered in English.
At the lower courts some work takes place in Sinhala and Tamil. However, often an English translation of the court documents accompanies the *swabasha copy* and arguments also sometimes take place in English.

During the course of a recent study carried out by the Legal Aid Centre of the Faculty of Law, law students received a complaint from a village north of Colombo that the work of the court in that area takes place almost exclusively in English and the proceedings are therefore unintelligible to them.

For the academic, the judge and the practitioner, a knowledge of English is vital if they are to achieve any mobility in their respective fields. English provides them with access to the higher echelons of the legal profession, as the language does with regard to other professions.

English was the language of colonial Sri Lanka. Leonard Woolfe - who served in the British colonial administration in both an executive and judicial capacity - captures vividly the experience of the litigant in colonial Ceylon.
It was like a dream. They did not understand what exactly was happening. This was a 'case' and they were 'the accused', that was all they knew. The judge looked at them and frowned; this increased their fear and confusion. The judge said something to the interpreter, who asked them their names in an angry threatening voice. Silindu had forgotten what his ge (ancestral) name was; the interpreter became still more angry at this, and Silindu still more sullen and confused. From time to time the judge said a few sharp words in English to the interpreter: Silindu and Babun were never quite certain whether he was or was not speaking to them, or whether, when the interpreter spoke to them in Sinhalese, the words were really his own, or whether he was interpreting what the judge had said.

Woolfe drew on his personal experiences for the novel, and it is not an unlikely surmise that this experience was a common one.

When the British took over they agreed to 'preserve inviolate' the existing laws of the colony, including the
customary laws. However, because of their unfamiliarity with the local languages British judicial officers came to depend on a class of legal intermediaries - the assessors and interpreters. These assessors were supposedly experts in the laws and 'customs of the natives'. However, in reality they were drawn from the higher social classes favoured by the British and their views often conflicted [Samaraweera (1985) pp.96-97].

As early as 1802 regulations were issued by the colonial regime which made competency in Sinhala or Tamil a prerequisite for promotions within the civil service. [Ibid.] However, these regulations were largely ignored and thus the judicial officers were forced to rely on the skills of interpreters. The interpreter position was one that was much sought after and initially drew its cadre from the higher classes, but with the growth of the legal profession its attraction waned and it began to attract people from the middle levels of Ceylonese society.
The legal system of Sri Lanka will continue to function in English in the near future. Given that legal materials are still available largely only in English and the production of legal literature in swabasha is still very small, the law is likely to continue to use English as its primary language. If indigenising the language of the legal system seems unlikely in the near future, competence in English becomes an almost essential tool for the lawyer. For legal educators, then, it would seem that bilingualism is the only way out. Therefore the opportunity of developing English language skills while at law school should continue to be given to the law students.

For the student who is not competent in English, not only would most legal materials continue to be inaccessible, but the student would have the added burden of learning another language while in legal study. The inequity of this state of affairs is apparent, and a long-term effort at
indigenising the language of the system would need to be attempted.

A knowledge of English would of course mean that the student would be in a position to access materials from other jurisdictions. Comparative study is a vital component of any law degree and a student without a comparative dimension would be that much a 'lesser student'.

XIV

THE LANGUAGE OF THE LAW: ITS TWO DIMENSIONS

The 'language of the law' has two dimensions. One is linguistic, which we have considered above. The other relates to discourse.

The linguistic dimension of language relates to the language in which the legal system functions. In Sri Lanka the system functions predominantly in English.
The discourse dimension relates to the technicality and the formality of the discourse of the law. The formal and technical discourse of the law makes it accessible only to a small minority - the legal specialists. Thus access to the legal system is possible only with the assistance of the legal specialist.

The discourse of the law is accessible only to the lawyer. This is because the discourse has been specialised to such an extent that it remains unintelligible to all but legal professionals. Even to those competent in English, legal ideas and concepts appear incomprehensible. This incomprehensibility has been promoted by a positivist legal tradition and by a legalistic system of legal education.

Lawyers play a crucial role with regard to both aspects of the 'language of the law'. It is the lawyer and the legal educator who shape the discourse of the law. Lawyers also play a vital role in determining what is 'legally valid' and what is not. They also play a crucial role in the formulation of issues placed before the conventional justice mechanisms of the legal system - the courts. The
public have no access to and play no role in formulating the discourse of the law.

It is also the lawyer who decides whether the linguistic dimension of the law should be changed. The resistance that the legal profession has successfully launched against the erosion of the position of English is an illustration of this role of the legal specialist.

It is clearly in the interest of the legal specialist to keep the discourse of the law formal and technical. The community's inaccessibility increases the lawyer's speciality. The monopoly of the discourse of the law is the fount from which the lawyer's power springs. Thus the substitution of Sinhala and Tamil for English would clearly not increase access. Rather it would merely result in the substitution of one elite discourse for another. It would create an indigenous legal discourse for one that existed in English before.

Thus changes need to be made at a more fundamental level and here lies the challenge for legal educators. What can legal educators do to increase access and better response?
Professionalisation creates a power relationship. It at once creates a body of persons with specialised knowledge and skills and a body of persons without this knowledge and skills. As mentioned, it is almost impossible to 'access' the system without the aid of a lawyer. It becomes then the responsibility of the legal system to ensure that this power relationship is not abused.

Professionalisation though is not something confined only to the legal profession. Medicine, accountancy and other professions all have to deal with the question of professionalisation and the power relationship it spawns. This power relationship is heightened by the language factor. By retaining the language of the law first, in English, and secondly in a discourse that is intelligible only to a small minority, the legal profession wields power in a more profound manner.
This power relationship has been further aggravated by the misplaced emphasis on the training of people chiefly for the 'practice of law'. Legal education has sought as its major objective, the production of a group of people who are equipped with the skills and training to litigate in a traditional court of law.

This focus of legal education is largely built around the inherited legal tradition of Sri Lanka, which is Anglo Saxon and positivist. The courts were the centre of the universe to the positivist lawyer and the training that was imparted was therefore one to equip the lawyer to function in this world.

Legal education has not sought as one of its objectives the abatement or the reduction of this power relationship between the professional and the non-professional. Rather the approach of legal educators has tended to aggravate the power relationship.
DE-PROFESSIONALISATION?

The inequities of this power relationship has raised the plea for de-professionalisation. However, is this possible, and secondly, is it desirable?

By de-professionalising the law, would we be merely substituting one group for another? Would we be replacing one elite with another? As Cotterrell notes 'the replacement of professionals by non-professionals does not avoid the situation that power is held by some (professional or not) to make decisions affecting others'. [Cotterrell: p.326]

Non-professional legal advisors either turn themselves into experts or fail to meet public expectations. Thus the creation of a body of persons with specialised legal expertise becomes inevitable.

De-professionalisation, however, may be possible to a degree. One way of reducing the power relationship and
the accompanying dependency would be by community education. Community education would involve providing knowledge and skills to the public, which can be used by them, in certain limited situations, without the assistance of any intermediaries such as lawyers.

It is here that a role for law schools exists. Legal education needs to move away from the concept of one which is geared only to those in the formal institutions of learning. Legal education needs to be seen as encompassing education for the community as well.

In Sri Lanka, only the Open University has recognized this. It has initiated several legal awareness programmes with the objective of increasing ‘popular awareness of legal rights and obligations’ [Peiris and Gooneseke: p.10].
The alienation of the public from the law is partly due to the fact that the legal system functions largely in English. Yet, will localising the language of legal education and the administration of justice be of any effect unless substantial modifications are made to the nature of the legal profession and to the content and style of legal education?

It has been argued that the 'discourse' of the law also contributes to this sense of alienation which the average person feels with regard to the law. The law is conducted in a discourse that is formal, technical, stylised and artificial. It is conducted in a language that is unintelligible to most of the public.

It is of course in the interest of the legal profession to keep the discourse formal, artificial and technical. It is this
monopoly of the discourse that gives the legal profession its enormous power.

What then should be the role of law schools? Can they simplify and de-mystify the discourse of the law? As the fount of the legal profession there is no doubt that law schools can affect significantly the discourse of the law. Changes in legal education may well take many years to be reflected in the legal system, but then it is these changes which endure.

XVIII

LANGUAGE AND THE NEW LEGAL ORDER

Indigenising the language of the law should clearly be a long-term objective of the legal system. The crucial question that should be posed is: Will the switchover from English to Sinhala and Tamil be more likely to generate original creative legal thinking? If the legal community thinks, writes and works predominantly in
Sinhala and Tamil, will this generate more creative and imaginative legal ideas and concepts? Will the use of swabasha give rise to more innovative legal approaches? Will it result in the emergence of a more appropriate and sensitive legal order?

If the answer to these questions is yes, then the need for the switchover is even more compelling.

This question also needs to be approached in the context of the steadily increasing demand for English. Tutories have mushroomed in several parts of the country offering courses in spoken and written English.

Attitudes to English have varied since independence. Soon after independence and in the 1950s, the attitude to English was one of hostility. English was an impediment to social advancement and power. These attitudes were promoted and seized upon by the government of Solomon Bandaranaike. Bandaranaike, despite his Oxford education, aristocratic background and Oxford Union secretaryship, saw in this animosity to English an opening to seize political power which he did with a large majority in 1956.
To the elite proficiency in English has been a major source of power and wealth. Or to state it the other way, proficiency in English has meant access to power and wealth. However, it is clear that among the less privileged attitudes to English have become more sympathetic.

The more sympathetic approach to English has also been encouraged by a change in attitude of the political elite. The United National Party which has held political power in Sri Lanka since 1977 has promoted the use of English and the teaching of English. There is now a strong demand for English language skills and thus the wider use of Sinhala and Tamil in this 'English friendly' environment may be difficult.
Legal education in Sri Lanka has unfortunately failed to take account of the developments that have occurred in the area of what may be titled 'legal activism'. Moreover, it does not seem that the reforms now being contemplated in some of the institutions of legal learning are taking these developments sufficiently into account.

There have emerged in South Asia, as in other parts of the South, new social movements. These social movements have emerged largely as a reaction to the failure of the political elite in the South to effect any substantial degree of transformation in the societies they live in.

Soon after colonialism, several of the countries of the Third World followed 'top-down' models of development. These models were based on the supposition that growth in the national income would
percolate to the poor. These countries also adopted authoritarian type political structures and carved out a large role for the state in the socio-economic sphere.

These policies and models of development failed to make any significant impact on the lives of the majority. As a result, non-governmental organisations (NGOs) and other social movements have emerged which offer the poor and the disadvantaged an alternative vision of development and an alternative path to transform their life-styles.

These NGOs have been involved in a variety of areas. These include human rights, health, environment, rural industrialisation, self-employment, water and sanitation, children and alternative technology.

Several of the NGOs have also used the law to effect social and economic transformation. An example is Social Action Litigation (or Public Interest Litigation) in India. Here the NGO community was instrumental in bringing a large number of public interest and group issues on to the agenda of the court and seeking a resolution of these problems in that forum.
Unfortunately these developments have not figured in the discourse that law students imbibe in the law schools in Sri Lanka. Nor is the prospect of a career with an NGO considered. There is a need for law schools to participate more actively in these processes of legal activism taking place and to focus on this activism as part of the courses.

XX

THE EXAMINATION SYSTEM

Legal educators in Sri Lanka have been reluctant to depart from the examination system. Examinations fit very easily into the positivist tradition of Sri Lanka. They are precise, contain a certain internal symmetry and are relatively easy to administer. Courses where students will be sent out into the wider community - whether it be to a disadvantaged community or an arbitration centre - and then be assessed on that experience, are not encouraged. But it is these courses which apart from encouraging students who cannot cope with the
examination system, will also assist in developing their practical and critical skills. Furthermore, it will help to situate law in its social, political and economic context and generate a better understanding of the legal system.

XXI

ACCESS, RESPONSE AND PRIVILEGE

It has been argued that two of the major problems of the law relate to 'access' and 'response'. The law is perceived of as being inaccessible and the response of the law often comes too late and offers too little.

One of the issues that straddles both 'access' and 'response' relates to 'privilege'. The law is identified as being allied with the privileged and the economically powerful. Further with regard to the question of response too, it is only the economically privileged who can indulge in prolonged litigation and cope with the technicalities and formalities of traditional litigation.
Legal education needs to take account of this. It would mean modifying the 'knowledge' component and the 'skills' component taught to students.

At the level of 'knowledge' it would mean modifying the substance of the courses so as to reflect a greater public or community component. And if within a course issues and subject areas need to be prioritized, it would mean according higher priority to those issues which have the larger public interest or community interest component.

It may also require a re-classification of some of the traditional subjects. This has occurred to some extent in the Open University. For example, some components of what were traditionally classified as the Law of Property are now being taught under the head Land Law. The focus has moved from an individualistic focus (in the Law of Property) to community focus, looking at larger questions of land ownership, land reform and land rights.

At the level of 'skills' it means exposing students to skills like mediation, conciliation, arbitration, negotiation, bargaining, and also to research and investigative skills.
In addition, students would also need to be exposed to courtroom techniques and skills.

The question of privilege or elitism is also related to the question of the knowledge or the lack of knowledge about the law, legal rights and legal processes. Some are more privileged than others because they are more legally literate than others about the law and know how to use the legal process. More often than not the legally literate corresponds with the economically powerful.

What then should be the response of legal education? Should law schools become involved in community education and programmes of legal literacy? The answer, it is submitted, is "yes".

There is a need to re-conceptualise legal education. We need to move away from a concept of legal education which is geared only to those in the formal institutions of learning. Legal education also needs to be seen as encompassing education for the community.

The argument against this would be that faced with limited resources - both monetary and human - law
schools in Sri Lanka and perhaps in the rest of the South, should focus on teaching and research. To ask law schools to take on the additional task of community education would be to stretch their capacities beyond their limit.

But, then, are not law schools ignoring one of the major problems of their societies if they do that? Ignorance of the law and ignorance of legal rights is one of the critical problems facing our societies. It has created public perceptions of eliteness and inaccessibility. Law schools clearly need to give priority to this question.

There is also another argument for broadening the ambit of legal education. The moment one accepts the need for a specialised legal profession, one creates a power relationship. Those in the profession become privileged and those outside it underprivileged. One way of reducing this dependency is by community education on the law and its processes.

The Open University has realized this. It has initiated several legal awareness programmes with the objective of increasing ' popular awareness of legal rights and
obligations' and de-mystifying the law. [Goonesekere and Peiris: p.10]

XXII

PRACTICAL AND CREATIVE SKILLS

Legal education in Sri Lanka has unfortunately not emphasised the development of practical and creative skills (or what may be defined as Clinical Legal Education in the American sense). These skills have always been considered to be 'extra curricular' and not worthy of academic credit. Legal educators have not deemed it important that students leave law school with some training in advocacy and courtcraft.

Drafting skills have been the only skills which have been considered important enough to deserve academic credit. Similarly, legal aid programmes have surfaced sporadically, and have not been continued with any
degree of enthusiasm. Nor have students obtained credit for work in these programmes.

Currently only the Open University requires students to participate in legal aid programmes. This forms a small part of their Jurisprudence programme, which all students are required to take in their final year. The Faculty of Law has recently established a Legal Aid Centre and a Human Rights Centre, but students do not get academic credit for work done with the Centres.

Clinical Legal Education

'Clinical Legal Education' (CLE) is a way of learning as well a "cluster of subjects and skills". It seeks to give students certain 'practical' skills and also a deeper understanding of the legal process, legal relationships and the nature of legal institutions. CLE thus attempts to teach students certain ideas about the law and it is also a different way of learning the law.

At the core of CLE is the idea of 'learning by doing'. CLE attempts to teach students through simulated and 'real life' situations. A student's experience in dealing with
(often complex) real life or simulated situations forms the core of clinical legal education. Through these real or simulated experiences, CLE seeks to deepen the student's understanding of rules, policies, actors and legal institutions. The focus in CLE programmes is on the difference between theory and practice - between the law in the books and the law in action.

CLE programmes also often concern themselves with questions of ethics and professional responsibility. It seeks to build in the student a critical awareness of the role and responsibilities of the lawyer and the legal profession.

It is possible to identify four major objectives of clinical legal education:

1. To provide training to the student in certain practical skills - these include pre-litigation skills, litigation skills, and also others like negotiation skills, arbitration skills and skills in legal literacy.

2. To give the student a more comprehensive understanding of the legal process, the
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relationships amongst the different actors, the nature of legal institutions and the links between the legal process and the larger social process.

3. To assist the student develop a critical understanding and awareness of issues relating to professional and social responsibility.

4. To build in the student a competence that will enable him or her to approach the practice of law with a certain degree of confidence.

A recent report of a Task Force of the American Bar Association noted that in that country, CLE has been responsible for increasing the profession's commitment to providing legal services to the poor. [p. 54] The report goes on to observe that,

While law schools could never be major providers of services to low income clients and fulfil their basic educational mission, their contribution today is highly significant. Principally developed in the past twenty years, the law schools' clinical programs provide not only training and experience with poverty law issues, but they have given birth
to valuable research centers at the schools which contribute on a continuing basis to the improvement in the delivery of legal services to the poor. [Ibid.]

Clinical Legal Education in the United States

In the United States, most law schools have clinical programmes which fall into four broad categories:

1. Simulated Exercises

These include moots (appellate advocacy) and mock trials (criminal cases). An attempt is made to simulate as closely as possible a ‘real life’ situation.

In most American law schools simulated exercises are taken for granted and form part of the academic programme. Most law schools either give the student the option or make it compulsory for the student to take one or more courses in this area. This must be contrasted with the position in Sri Lanka where moot courts and mock trials are held irregularly and are yet not considered worthy of academic credit.
However, American law schools have also realized that the impact simulated exercises have is limited. Thus clinical programmes have gone beyond simulated programmes and have sought to give the student a broader exposure to the legal process. This includes an exposure to dealing with 'real life' situations.

2. Externships/ Internships/ Placements

Students are sent out by the law school to law offices and other centres to gain first-hand experience. Supervision by the law school is less in this case than in other types of CLE. Students may be required to maintain a diary or some other sort of record and are given credit on the basis of this record.

3. Appellate Litigation Clinics

Litigation at the appellate level is undertaken by the law school clinic. The research for the cases is undertaken by the students. Several of the law professors are also practicing attorneys. In some courts in the United States, students are permitted to make appearances under the guidance of an attorney. In other courts, like the U S Supreme Court, the law
professor will appear, but most of the research is done by students taking this clinic.

4. Legal Aid/ Community Service Clinics

In these clinics the focus is on community service and providing legal services and support to the disadvantaged and the poor. Law students will work almost entirely with indigent clients who bring their problems to the law school clinic. These could include problems relating to immigration, political asylum, family relations and housing matters.

It is also possible to have clinics with a wider scope. They may focus on any issue of public interest. Others may also include activities such as the teaching of law to high school children ('Street Law').

Why CLE?

One of the major criticisms levelled against legal education in Sri Lanka, is that its courses are highly theoretical. Too much emphasis is placed on the law in the books as opposed to the law in practice or the law in action.
Clinical programmes will give students the option of supplementing their theoretical studies with a practical component. It will result in a more holistic and integrated approach to legal education.

More importantly it will expose students to the complexities of the legal process and its links with the larger social process. In addition to theory, it is important that the student interact with the community - peasant groups, farmer communities, urban slum communities, practicing lawyers, judges and others. This will create in the student an awareness of the larger social reality in which he or she will function. Moreover, it will also raise in the student a critical awareness of his or her role as a lawyer.

CLE will give the student the opportunity to develop lawyering and other skills while at law school. The criticism is that these skills are not effectively imparted when law students apprentice. This is because practicing lawyers seldom have time to teach these skills to the apprentice. The law school provides a more conducive environment for students to experiment and learn these
skills and to develop a critical understanding of the role and responsibilities of the legal profession.

A Possible Model for Sri Lankan Law Schools

1. Simulation Exercises

Simulation exercises (moot courts and mock trials) should be introduced into several of the existing subjects. They would serve to enrich the learning experience. It could be made compulsory in some subjects, for example, Criminal Procedure, Civil Procedure and Evidence. In other subjects it may be made optional. Students may opt to do a moot or a mock trial or participate in other clinical experiences as part of a course and be given academic credit for it.

In some subjects like Constitutional Law and Local Government Law, field visits to Provincial Councils and institutions of local government would make the learning process more effective.
2. A Legal Aid/ Public Interest Law/ Law & Social Change programme

An optional course that will focus on issues of public interest law and questions relating to the poor and the disadvantaged should be introduced in the institutions of legal education. The course would have both a theoretical component and a practical component. The emphasis will, however, be on the practical component.

There is very definitely a need for students to be exposed to some form of practical training while at law school. It is equally imperative that students also be given the chance of working in creative legal aid programmes in a law school environment.

It is possible to fuse elements of both these types of programmes into a single 'Law & Social Change', a 'Law & Society' or a 'Public Interest Law' programme and offer students the choice of specialising in one area. The programme envisages both a classroom component and a practical component.

The classroom component (to be conducted in small groups and held every two or three weeks) would be
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devoted to a critical analysis of the student's practical work in a group environment. This would include sharing information on the ongoing work with the other members of the group and discussing possible strategies with them. There would also be a built-in theoretical component that would examine some of the literature in this field.

In the practical component the law student would work on a law school administered Legal Aid Programme. The options for the student would include working with indigent clients who may seek the assistance of the Legal Aid Programme of the law school; working on legal literacy and legal awareness programmes (this would include the production of video, audio, and other materials); and other programmes which would look at the way the law operates in society.

There is also a need to infuse into existing subjects a practical component. For example students studying local government and devolution law could visit and work on projects connected with provincial councils and other mechanisms of local government; those doing family law would perhaps handle maintenance and other disputes; etc.
The course will also raise in the student an appreciation of the importance of legal aid work and acquaint them with the social responsibilities of the legal profession.

3. Internships/Placements/Externships

Externships, internships or placements is another possible clinical activity that Sri Lankan law schools should explore. A period of internship with an organisation - whether it be a rural NGO, an urban law firm or an arbitration centre - can be an invaluable learning experience.

However, internships/placements/externships create problems in relation to supervision. The law school will have very little control and supervision over the internship/placement/externship. This becomes very important, especially if academic credit is to be given.

It may be possible to have a scheme whereby students may have the opportunity of working during a vacation in a law office, NGO or other centre. However, the student may not receive academic credit
for this but may perhaps be allowed to have it recorded in his or her degree certificate.

XXIII

OBJECTIVES AND GOALS

The question of objectives and goals is a fundamental question that Sri Lankan legal educators will need to address. Also given the current state of ferment the Sri Lankan system of legal education is in, legal educators need to address their minds to the question of goals and objectives. Any system of legal education would need to have a clear perception of its objectives and goals. What is the system aiming at, and whom is it catering to? What sort of skills and training should the system provide? These fundamental questions need to be grappled with by those taking decisions with regard to the future directions of legal education in the country.

In Sri Lanka the primary goal of legal education has been to train people to go into practice. At the Faculty of Law,
there was initially an attempt to develop the analytical skills of students, but this objective is not being pursued with any zest now.

American jurist Lon Fuller believed that lawyers should be concerned with law reform. They should also strive to see that legal services are made available to the poor, and that the champions of unpopular causes are duly represented. [Summers: pp. 137 - 141]

Fuller loathes the 'black letter mind' - the mind that is neglectful of the purposes of legal precepts, content with mechanically applying the law, incapable of analysing problems into their constituent elements, and unable to bring an independent judgement to bear. [p. 139]

To former Canadian Chief Justice Brian Dickson,

The primary goal of legal education should be to train for the legal profession people who are first, honest, second, compassionate, third, knowledgeable about the law; and fourth, committed to the rule of law and justice in our society. [Dhavan et al: p. 37]
Peiris and Goonesekere note that,

*If legal education is to have relevance and meaning in this society it must focus on the law in action and produce lawyers who are sensitive to socio-legal issues, and can understand its relevance as a method of social control. More than at any other time, a lawyer cannot afford to treat the law as a set of abstract legal rules that have immutable validity.* [p. 19]

According to a group of South Asian law students who met in Colombo in July 1992, the objectives of legal education should be to produce expert professionals and enable the lawyer to use law as a tool of social engineering. [*Lawyers as Social Engineers*: pp. 13-14]

Though there may be different perceptions of a lawyer’s role, some overriding philosophy would need to guide any proposals for legal reform. However, given the diversity of role perceptions, it also necessary that this overriding philosophy take account of this diversity. As Said notes,
the university ought to be the place not where many vigorous and exciting intellectual pursuits should be forbidden but where they ought to be encouraged on as wide a front as possible. [p. 13]

Sri Lanka's crisis at the moment relates to one of values, to a lack of democratic and humane values. Its legal crisis relates to the eliteness, the detachment and the aloofness of the law, its processes, institutions and personnel. The challenge then, is the generation of a democratic culture and the generation of a vision of law as a tool of socio-economic advancement.

Do lawyers have a role to play in preventing the erosion of democratic values? Can lawyers help in establishing a more democratic society as Laswell and Mc Dougall ask? [p. 208]

Lawyers end up in a variety of positions. They may function as advisors to governments, apart from advising corporate entities and other private individuals. Their capacity to influence the conduct of the state and these other entities and individuals is significant.
Sri Lanka's democratic institutions are threatened and its democratic values are being eroded. Sri Lanka needs lawyers who are democratic and socially active. It needs lawyers who are committed to the propagation of democratic values and lawyers who are committed to the using of law as a means of social, political and economic reform. It becomes a fundamental obligation of the law school then to produce such a body of people.

XXIV

THE ROLE OF THE LAW SCHOOL

Legal educators would also need to address the question of the role of the law school in society.

What should be the role of an institution of legal education in our society? Does the obligation of a law school extend only to those within its portals? Or does the law school have an obligation to the communities around it? How far does this obligation extend? Do
institutions of legal education have an obligation to meet the thirst for legal knowledge that members of disadvantaged communities have?

It has been argued elsewhere in this monograph that legal education needs to be re-conceptualised so as to include education not just for law students but also for the community. Community education would be one way of 'de-professionalising' the law (at least to a degree) and reducing the dependency the public have on lawyers.

Furthermore, should educational institutions confine themselves solely to providing legal instruction? Or should they become institutions of reform and change? Should the academic and student community within the law school focus on this aspect too as part of their programme of activities?

The thrust of this paper has been to argue that law schools in Sri Lanka have to take on this broader role. They cannot afford to remain institutions for the training of people who go into law practice. They have to become centres of research and reform. The concept of change is intrinsically linked to legal education, and its curriculum
and methodologies have to give this primary focus. Law schools have an obligation to ensure that the law plays an effective role in the move towards better life-styles for the community.

XXV

THE ROLE OF UNIVERSITIES

There is something hallowed and consecrated about the academy: there is a sense of violated sanctity experienced by us when the university or school is subjected to crude political pressures. [Edward Said: p. 12]

Universities and the academia need to seek for themselves a more active role in Sri Lankan society. Together with the judiciary, the press and non-governmental organisations, universities constitute that very delicate make-up of 'checks and balances' of any democratic society.
If democracy is to be sustained and human rights advanced, civil society needs to assume greater responsibility and play a more active role. Academic institutions are a significant component of civil society and need to play a pivotal role in shaping the response of civil society.

The response of civil society may be determined to a large extent by the response of its intellectuals. The ideas that come out of universities, the nature of its courses and curricula, and the areas it prioritizes for research, have the capacity to shape public and governmental opinion. The process of atrophy that has set in with regard to Sri Lankan universities is part of the larger crisis affecting almost all institutions. It relates to a crisis of politicization, an intolerance of dissent and a steady erosion of democratic values.

Academic institutions need to get involved in and respond to national issues if this process of decay is to be reversed. Their research and courses need to be sensitive to national problems and priorities. Yet it is important that universities also promote the values of ideological diversity and dissent.
Universities in the country are currently undergoing a severe credibility crisis. They have failed to discharge their responsibility of being trail-blazers of new ideas. They have also failed to adapt their curricula to keep pace with changes taking place in society. As a result, the public perception of universities has undergone a change and the esteem they were held in as institutions of learning and change has become lower.

The two and a half year closure of universities (between 1987 and 1990) also affected the credibility of universities severely. In other parts of the world, like Palestine, and also in Northern Sri Lanka (where Tamil militants are waging a separatist war) universities have continued to function. This is despite the high level of violence and conflict in those areas. In Southern Sri Lanka, on the other hand, even though the intensity of the violence and conflict was less, universities shut down for close to three years. The impact of this closure on Sri Lankan society has yet to be adequately researched.

There is, then, a great need to revive the intellectual life of our academic institutions. They need to re-emerge as centres of learning and change, deeply involved with
national development and social advancement. They also need to emerge as autonomous centres, with little or no state interference and the freedom to regulate their own affairs.

XXVI

LEGAL EDUCATION: A BROAD FRAMEWORK

The following is an attempt to set out a broad framework for legal education. It is submitted that law schools would need to address the following sets of knowledge and skills issues when looking at the question of reform.

1. Knowledge

Legal education would need to focus on giving the law student an understanding of some of the more important concepts, principles and doctrines in some of the major areas of the law. This would include some exposure to legal history and some of the
historical and other forces which have shaped our modern legal system.

Legal knowledge needs to be related to the wider social, political and economic context. This would mean making substantial modifications to the content of courses that are taught now. It would also involve a re-classification of some of the existing subjects.

It would also mean therefore a multi-disciplinary approach to the teaching of law. Conversely it may require the law teacher to make a legal input into other courses such as medicine, politics, history and sociology.

This wider approach would need to be applied to the teaching of legal history as well. Legal history cannot focus only on the enactment of statutes, case law and the policy making process, but should situate this in the larger social and political context.

2. Critical Skills

Legal education would need to give the law student the opportunity of developing critical skills - skills that would help the student in critically evaluating the
concepts, principles and doctrines he or she is exposed to; skills, furthermore, that would focus on reform and help the student modify and refine existing legal ideas.

The current approach with regard to assessment at an examination, is to require the student to show a knowledge of the law or to show a knowledge and the capacity to apply it to a given problem. Legal education needs to go beyond this. It needs to give the student the capacity to evaluate and criticize existing concepts, principles and doctrines, including the capacity to critically evaluate some of the 'fundamentals' and 'basics' of the legal system. This is particularly important in the context of a country that has an alien legal system.

3. Creative Skills

The development of creative legal skills has seldom been an objective of legal education. It becomes an imperative that law schools expose the student to some of the major social, political and economic problems of the day; and encourage students to seek new and creative solutions to some of these problems
through the use of the law. This would also include tracing the links between law and other disciplines.

In this area it may require dispensing with traditional examinations and instead testing the student's capacity in the area through other practical methods. Students need to go out into the community and interact with people so they can observe the law in action and the role law plays (or often fails to play) in the lives of the public.

This is also perhaps an area where those who do not converse fluently in English would be at an advantage. English-speaking students, as a general rule tend to come from affluent and urban backgrounds. Swabasha-speaking students, on the other hand, tend to come from rural and less affluent backgrounds. Swabasha students may thus find it easier to interact with disadvantaged and poor communities.

4. Practical Skills

The law student should be given the opportunity of cultivating certain relevant practical skills which would be of use in a wide variety of careers the student
may decide to pursue. This would include skills in articulation, argumentation, writing, research, drafting, mediation, conciliation, negotiation, investigations, arbitration, bargaining etc.

5. English Language Skills

English language skills are important in Sri Lanka because of the paucity of legal materials in Sinhala and Tamil. Moreover, English would also be important in providing access to international and regional developments.

The inequity of this rule - that law students should have to continue to learn English - has already been referred to. It would place an additional burden on those not competent in English.
CONCLUSION

This monograph has been based on the idea that the major function of law is change - that change is possible and to show how this change can take place. If this is the central function of law then it also becomes the task of lawyers to use law for this end.

The role the law can play in the transformation of people's lives has seldom been highlighted by Sri Lankan legal educators. The teaching methodologies, curricula and attitudes have not fostered this perception of the law. There is clearly a need for a radical shift in the way lawyers think about and approach the teaching of the law.

All across the South people are involved in creating better societies for themselves. Communities are looking towards eradicating poverty, and improving their levels of social, economic and political existence. They are
searching for egalitarian societies and equality of opportunity.

If the legal system is to partake in this effort creatively, then there is a need for new thinking on the part of the legal community. There is a need for innovation and creativity.

It is then the responsibility of legal educators to see that this creativity and imagination is fired in the law schools of the South - so that when the lawyers of the future learn about the law, they will learn not just about rules and processes, but about life-styles and poverty, about reform and change, and about the role they may want to play in improving these life-styles and in eradicating poverty.
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The Law & Society Trust is a non-profit making institution committed to improving public awareness on civil and political rights and cultural and socio-economic rights, and equal access to justice.

The Law and Society Trust was set up in June 1982 to initiate studies and activities on law and social change. It was created to fill a vacuum in our study of the law, its processes and institutions. Legal research, especially in the third world has traditionally been concerned with textual developments and case law evolution. There has been very little research conducted into the nature of the legal process and its possible contribution to national development. It was to fill this gap that the Trust was established.

The Trust has endeavoured to design activities and programmes, and commission studies and publications, which have attempted to make the law play a more meaningful role in the lives of the poor and the disadvantaged. These activities have taken the form of community education of the poor, on their rights and the functioning of legal processes, the production of films aimed at stimulating reform in crucial areas, and the designing of alternative forms of dispute resolution to meet the special needs of the rural and urban poor. The
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LEGAL EDUCATION FOR SOCIAL CHANGE

Questions relating to legal education and law reform have often been addressed separately in the Sri Lankan context. This monograph looks at the question of legal education against the wider backdrop of Sri Lanka's inherited legal system, legal culture and legal traditions. It argues that legal education should promote social transformation. It calls for the training of professionals who are committed to fundamental values of democracy and human rights. The author calls upon law schools and universities to be actively involved in public and social life. Questions relating to language are also looked at. Sri Lanka is one of the few jurisdictions in the world where law is taught in three languages. This has affected in a very fundamental manner the content and methods of legal education.

This monograph is part of the Law & Society Trust’s Socio Legal Series. Other publications address questions relating to freedom of expression, land rights, refugees and the rights of women. The objective of these monographs is to look at issues from a broader socio-legal perspective and to try and meet a gap that exists in the literature in this field.

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