



# **Asian Seminar on Innovations in Legal Education for Alternative Development**

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CRITIQUE OF LAW SCHOOL EDUCATION

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A few months ago a first year student walked into my room and asked hesitantly: "Could you tell me what more a lawyer can do? I am wondering if I have made a mistake coming to the Law Faculty ...". Two weeks later, another student, also in her first year, approached me to discuss her uncertainties and apprehensions over the law course. I wonder how many students find themselves in such situations, filled with doubts about their future role, almost embarrassed at admitting they would like to do something which is socially responsible. I also wonder how many of them sublimate these feelings, and eventually become absorbed by the existing legal profession.

For too long the legal profession has contributed to a concentration and a monopoly of power. Legal knowledge is mystified, and such mystification manifests itself in an alienating legal system with lawyers functioning as a breed apart. This is more so in Asia where the origins of most legal systems can be traced back to European sources. Colonial rule brought with it military, administrative, legal and educational structures. The long duration of such rule meant that when independence was attained, these structures had been entrenched to a large degree. This is especially true of the legal and educational systems. Individuals with ability and potential were initially trained in Europe, and when educational institutions were subsequently set up in the Asian territories, a local network sank its roots, spreading European philosophies, attitudes and values. The study and practice of law, in particular, reflect the perpetuated strength of a profession which serves those in power. Young students who enter law school find themselves quickly discarding previous notions of justice and rights, if any, and replacing these with special concepts and jargon, and more fundamentally, certain mental frameworks. Consequently, we find all over Asia, replicas and shadows of Euro-American courts, judges, lawyers and law students. Students in Malaysia and Singapore absorb from the same books as their English counterparts. Lawyers and judges from India to Singapore adorn robes similar to their counterparts in Europe. The language used in most Asian courts is English. While a minute group of persons make and administer the law, the overwhelming majority of the Asian populace are left on the fringes of justice at the same time the law is wielded to safeguard and further the interests of that powerful minority. It is hardly surprising that a student newly entering the present exclusive arena of legal education finds herself utterly bewildered. She has indeed embarked on a journey which will take her



into dimensions of power and influence, where demands will be made upon her to develop "professionalism in the science of law".

The end-product which is the lawyer is, however, not merely the result of law school training. The process begins from the moment the child first goes to school, normally at the age of six. For the next ten to twelve years this child undergoes rigorous training, accumulating facts and concepts in vast quantities, to be regurgitated in examinations. Mid-term tests, monthly tests, public examinations, take-home tests, open-book tests ... All this drilling aims at preparing him to succeed in getting into institutions of higher learning, which by their nature, have limited intakes. The child learns that in life, one either succeeds or fails. He is constantly graded and placed in specialised fields of study depending on whether his examination results are good or weak. The same child quickly discovers that he is judged by his performance in tests, he learns to be competitive because the top is where he must go to, because there are limited places as he proceeds along the education hierarchy. Passing an examination soon becomes insufficient. He must strive to be the best. The university represents the final lap in this system of aggressive pursuit. This has been further ingrained as a vital aspect of the implementation of post-independence Asian development strategies. The conventional approaches to development demand technocrats and professionals who are to participate in galvanising their respective countries towards 'modernisation'. Since education, particularly higher education, has been and still is, the privilege of a minority in most Asian countries, the growth of a powerful elite has been accompanied by an even more rapid expansion of a majority of citizens who are, in various degrees, victimised by development and, in particular, by law.

Thus, the student who enters law school has spent the formative part, indeed the major portion, of his life within an education system where the teacher is 'the authority', where more often than not his role is passive while the teacher's is dominant. Over-numbered classes, unmotivated teachers and overloaded syllabi - such are the almost uniform characteristics of Asian schools. Children in the rural areas are even more disadvantaged, many of whom are classified as 'unsuccessful' because they have failed to remain in the system. Left without acceptable credentials they form the increasing group of subjects of the law, to be controlled and regulated.

Fortunately, human resilience has ensured that a few survive the system. Parental influence, a teacher with a different attitude, some element from outside the school can sometimes help a person retain his inquisitiveness, his creativity and a constantly questioning based on humanist



values. Perhaps it is this survival instinct which urges some students to question law and their own future role when their initial encounter with law studies proves to be devoid of concepts of rights and justice. Their individual perceptions of law being equivalent to justice are flung against strange and unfamiliar concepts which demand the learning of a new language, which bear no semblance to what they themselves perceive to be the study of law. Will these students survive law school?

#### Law as a Programme for Higher Study

Unless a person has been personally involved with some aspect of the law, any legal knowledge he may have would have been gleaned from the media or from general understanding. Law is unsurprisingly usually associated with criminal law. The myriad of written laws mythically known to the public by that device called the Gazette in many countries remain, in fact, a mystery to most people, including many lawyers. These laws regulate and control society, lying ready to be used by those who are aware of their existence. To gain knowledge of these weapons one has to spend years fighting to enter university. Few succeed, so that the group which ultimately gains entry into law school is a privileged minority. Some countries make it even harder; a law degree may only be pursued at a post-graduate level.

Formal legal education is therefore clearly preserved as an exclusive training. Law which affects each and every person in society is removed from ordinary people, and transformed instead into a science, a specialty, the knowledge of which is monopolised by the 'professionals'. Following from this is the establishment of structures to administer the law and adjudicate upon disputes. These are inevitably so complex that again, only trained professionals may participate in them. The ordinary person finds himself needing 'representation' by lawyers. Legal education teaches the students that they have the necessary skills and knowledge to participate in law-making and dispute resolution, that these are so complex and intricate that only they who are specially trained should be in the forefront of the legal arena. Since the law will subsequently be their livelihood and path to power and influence, if they so choose, there is ample reason to perpetuate the alienation of law.

#### Contents of the study of law

Having selected the strongest from among school students through a system of constant, high-pressured examinations these young minds are then set on a three to four-year process of training.



Most Asian universities had been established either during colonial rule or after independence. In either event, these institutions are based on Euro-American models. Since colonial legal systems had been so well-entrenched, it naturally follows that legal education was also closely patterned on the models of the colonial powers. This is quite stark, especially among the Commonwealth countries, where legal education is still closely linked with the development of law in England. The curricula in India, Malaysia, Singapore and England are almost similar. In the span of a few years, students are introduced to compartments of law. They learn the rules within the cloistered environs of the university which is itself usually urban-based. There is a dearth of exposure to social problems and conflicts. Students from the middle-class urban areas are thus likely to retain that same worldview, while the poorer students, be they from the urban or rural areas, regard their training in law as an opportunity to achieve position and wealth. Few, if any, return to their respective communities to share their knowledge and agitate for social change.

Such attitudes are but the result of a continuous period of education which began from the early stages of formal education. The study of law devoid of social content and humanistic questioning serves to reinforce materialistic self-interest. Law then becomes an instrument of self-attainment and power concentration, rather than as a medium of much-needed social change.

#### The law teacher

While the student enters and leaves the university, the teacher usually remains for a longer period. At every stage of formal education the student is subject to the presence of a teacher. Most of us, at some time or another, have been sagely told by our teachers that school is a preparatory ground for life in society, that school is a microcosm of society. The same thing is repeated to us at university. This taste of society is, unfortunately one of an authoritarian, anti-participatory hierarchy. The immediate contact with this system is the teacher.

Since the teacher is also the product of a similar, if not the very same, system of education, she can be extremely effective in perpetuating the values and orientation of that system. She represents power in the university - she is the one to determine what is to be taught, she sets examination questions and she grades. A student again experiences a relationship where



one side is dominant over the other. There is fear, and even resentment. This pattern which has pervaded his entire school life repeats itself in society. He has no doubts that he would choose to be with the powerful, and he knows he has the tools to do so once he graduates from law school.

Just as there are students who survive the system, there are also teachers who manage to do the same. These persons may attempt to compensate for the inadequacies of the present approaches to legal education, but this is not sufficient to effect a true impact on society in the long term. We cannot remain complacent with the little that we may have achieved.

### Intellectual dependency

While most Asian universities now train their own lawyers, thousands of students still receive their legal education in Europe and the United States. The attraction of the profession together with the limited intakes of local universities partly accounts for the annual exodus of Asian students to foreign lands. Those with notions that a better education is available overseas follow suit. Even those who are local graduates pursue further studies and research in foreign universities.

The time spent in such universities further alienates these students from their own society. The cultural domination which is so formidable in Asia itself, reaches its heights in the source-countries. While there are some who reject the overt domination, most do not. Reinforcement through legal literature based on monopolistic values ensure that Asian scholars remain intellectually dependent. They are more familiar with non-Asian thought and philosophy, with the result of being even more divorced from their own societies. Alternative education leading to alternative development can never be realised if we do not strive to attain intellectual self-reliance. We will not make any progress if we are afraid to awaken our own creativity, if we do not take the step to return to our own society.

### Influence of the legal profession

In most Asian countries, following the Euro-American tradition, the professional body of lawyers assert a considerable amount of influence over the content and orientation of legal education. Where there is a requirement of Bar qualifying examinations, graduates of law schools have to take yet another test, this time determined by the professional Bar itself. This means that most law schools tend, whether consciously or otherwise, to orientate their teaching towards the needs and demands of the profession. At the same



time, the Bar also regulates its admission policy, sustaining the elitist nature of the profession.

Even in countries where there is no such requirement, the Bar still plays a role. The power and influence of judges and lawyers ensure that law schools continue to place in priority the standards of the existing profession. So long as law schools remain sensitive to the demands of the present system, the need for social change which can only come about with radical restructuring will meet with degrees of opposition. For every course with social content, there will be multiple courses with emphasis on the status quo. In view of the lack of exposure to social issues which underlies most university education the law student in particular will see, as an example, only the 'establishment' lawyers.

### Conclusion

The increasing disillusionment hitherto conventional development strategies had led to a move for change. The search for alternative development is aimed at reinforcing humanistic values, and it is in the education system that we find one of the major sources of the present social structure.

However, the study of law as a programme for higher education is inherently limited in attaining the goal of genuine social change. Much as we may try to reform the law curriculum, the present monopoly of knowledge will not ease sufficiently to make an impact on society if legal education remains exclusively within the realm of the university. Certainly, law should be learnt in the context of humanistic values and societal nuances. It is undeniable that students should personally encounter the effects of legal injustices on the various segments of society. Yet this will never be enough.

We can only effect real change if we consciously work at evolving a legal system which reflects the historical and cultural values of each of our respective societies. The process of making laws, the content and language of laws, the avenues for resolving conflicts of interests - all these and more have to be opened to our society as a whole, and not be kept jealously within the domain of a few. The concept of a legal profession needs honest appraisal by lawyers themselves. The internal self-regulation practised by lawyers' associations cannot, and should not, continue. From the perspective of education, this means that legal education must move out of the university.