

Advancing Africa's Development Through Legal Education: A Ghanaian Insight

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There is a plethora of literature on the state of legal education in Africa. Many of such works deal with structural defects in the legal educational system whereas others focus on content analysis of legal education curricula. These works are unanimous that the state of legal education in Africa requires a review of the system to meet local needs. In this paper we reiterate the issue of local content and argue that if legal education is to serve Africa well, then, it must be tailored to meet her local and contemporary needs. By extension, we also explore the missing links between legal education and development. Using Ghana and other African countries in a comparative discourse, it is our view that beyond the lamentations on the poor state of legal education in Africa lies the need for reforms. Such reforms, as is hoped, would advance Africa's development in areas where she falls short.

Keywords: legal education, sustainable education, its relevance to development

Background

The period immediately following independence witnessed a significant scholarship regarding the nature of legal education in Africa (Manteaw, 2008). The effects of colonialism on Africa's development not only demanded but also required independent African countries to train legal professionals who could transform Africa's legal system and assist in the overall development of Africa. Policymakers and academics considered legal education as a catalyst to Africa's development (Manteaw, 2008). However, this dream was short lived. With the civil unrest and political instability that followed independence, Africa's focus shifted towards other pressing issues, such as personal security, political stability, constitutionalism, economic development, and many others. Politicians were more concerned about consolidating political power (Ndulo, 1998). The African academic focused on the narrative of the effects of colonialism. The net effect therefore is that even though there is a plethora of literature on the nature and state of legal education in contemporary Africa, little attention has been paid to the idea of using legal education as an instrument for transforming African societies (Ndulo, 2002; Manteaw, 2008).

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The predominant body of literature on legal education in Africa deals with structural defects in the legal educational system whereas others have focused on content analysis of legal education curricula. These works are unanimous that if legal education is to serve Africa any better, then it must be tailored to meet local and contemporary needs. However, these works have hardly examined the link legal education should have with Africa's development. In this paper, we attempt to unveil this link and argue that there is a strong affinity between legal education and development. Using Ghana and other African countries in a comparative discourse, it is our view that beyond the lamentation on the poor state of legal education in Africa, there is the need to explore why Africa's developmental agenda must have in focus a well-structured and dynamic legal educational system. The significance of this paper lies in its ability to not only rekindle the debate on the need for a complete overhaul of legal education in Africa, but also the requirement that African countries should have a developmental agenda that is not divorced from legal education.

Africa's Legal Education in Perspective

Prior to her contact with colonialists, traditional Africa maintained a legal system based on the traditions and customs built through years of existence and experience. Customary law was the basis for nearly every aspect of life such as marriage, commerce, religion, politics, and inheritance. As one author remarks, "[i]nheritance, ownership of movable or immovable property, status of individuals, rules of behaviour and morality, were matters irrevocably settled by the customary law, with which everyone was familiar from childhood, and litigation regarding such matters was ... almost inconceivable" (Manteaw, 2008, p. 911). Chiefs and family heads received training in customary law as they were perceived to be custodians of custom. Indeed, such persons were deemed to be "legal professionals" of a sort. In essence, traditional Africans attached importance to legal education (Manteaw, 2008) even though it was largely informal in character. The point ought to be made that litigation was alien to traditional African legal system. At best it combined the principles of negotiation and "used mediation to resolve disputes and maintain balance and harmony between parties and in the community" (Ayittey, 2006, p. 19; Manteaw, 2008). Thus, traditional African legal system was more focused on a peaceful co-existence between the disputing parties than insisting on the right of each disputant. Consequently, traditional adjudication made no use of representation. Parties in disputes represented themselves. A rare and limited form of representation was necessary in cases where a party at fault employed the services of an elder to render the needed apology on his/her behalf.

With the advent of colonialism, traditional African legal system suffered a disruption. Colonialism introduced formal legal education which focused on litigation at the expense of other useful roles that lawyers could perform (Gower, 1967; Manteaw, 2008). But formal legal education during the colonial period had a rather slow beginning. For example, in Nigeria [then Lagos colony] the British colonial administration in 1862 introduced a system of court, patterned after the British system. However, with the coming into force of the 1876 Supreme Court Ordinance to regulate the legal profession and to define those who could engage in the practice of law in the colony (Manteaw, 2008), it would appear that there were many routes to the practice of law in Africa during the colonial era. The Ordinance provided that

those who had already been admitted as barristers or advocates in Great Britain or Ireland, or as solicitors or writers to the signet, in any of the courts at London, Dublin, or Edinburgh were to be allowed by the Chief Justice to practice as barristers and solicitors in the [Lagos] colony. (Manteaw, 2008, p. 913)

According to Samuel O. Manteaw, educated Africans deemed sufficiently knowledgeable in the law by virtue of their close association with lawyers were also allowed to practice as attorneys.

This continued to hold sway until in 1945 when the Supreme Court (Civil Procedure) Rule was passed. This ended that era of “self-taught attorneys” who, although not professionally qualified, were allowed to function as barristers and solicitors (Manteaw, 2008). From that time, only those “entitled to practice as barristers in England or Ireland or as advocates in Scotland could be admitted to practice in Nigeria” (Manteaw, 2008, p. 913). No specific justification is given for this shift in focus, but it is obvious that clients who demanded the services of lawyers preferred those who had acquired formal legal training. Accordingly, formal legal education became an essential enterprise. Moreover, the lack of qualified persons in the colonies compelled the fusion of barristers—those who appear in court—and solicitors—those who are confined to office work—and marked the beginning of a fused legal profession in Nigeria (Manteaw, 2008).

In Ghana [then Gold Coast Colony] there were no barristers and solicitors until the late 1800. However, it is on record that “some educated Africans began to specialize in the presentation of cases” in 1853 (Manteaw, 2008, p. 913). By 1864, a court order mandated these individuals to obtain licenses. This was the beginning of “Ghanaian lawyering” (Manteaw, 2008). These practitioners, though not qualified lawyers, served as “an important intermediary between the formality of the courts and their illiterate [clients]” (Manteaw, 2008, p. 913). Shortly after the passage of the 1864 court order, these intermediaries were required to “pass a simple examination before the Chief Magistrate”. The examination was designed to test their “knowledge of court procedure, and of the broad general principles of civil and criminal law” (Manteaw, 2008, pp. 913-914). Consequently, the legal system in Ghana became more formal and professional advocate qualification became a prerequisite to legal representation. Formal legal education thereafter became necessary.

However, in spite of the obvious need for legal education institutions in Africa, the colonial approach towards this need was rather abysmal. Professor Muna Ndulo submits that “[a]s a matter of policy, legal education was discouraged” (Ndulo, 2002, p. 489 as cited in Manteaw, 2008, p. 914). According to W. L. Twining this was not an accident; colonial policy deemed it “more important to train engineers, doctors, and agriculturalists than lawyers” because “Africans who wished to read law were regarded as preparing for a career in politics”, and “it would be self-destructive for a colonial government to encourage the production of politicians” (Twining, 1966 as cited in Manteaw, 2008, p. 914). Yet even commitment to train more African doctors and engineers was lacking (Manteaw, 2008). For example, in 1959, Malawi had “only twenty-three Malawians with university degrees”. In Ghana, the colonial administration abandoned the plan, proposed and initiated by Sir Gordon Guggisberg, then governor of the Gold Coast Colony, aimed at training Africans to man medical, engineering, and other important positions.

The absence of local legal training institutions coupled with lack of commitment on the part of the colonial government to train local lawyers compelled many Africans with the desire to become lawyers to travel to London to join an “Inn of Court, and acquire English professional qualifications” (Manteaw, 2008, p. 915). It was only the rich in society who could undertake such a training to become legal professionals to attain legal education. It has been reported that British expatriates and Asians dominated the legal profession during the colonial period. Available statistics showed an unimpressive number of African lawyers across Africa. For instance, out of the over three hundred qualified lawyers in Kenya, there were less than 10 Africans. Similarly, of

the one hundred lawyers in Tanzania (then Tanganyika) in 1961, only one was an African (Manteaw, 2008). Even the few African lawyers were not better than their European counterparts because their practice could not address local needs. As Professor Muna Ndulo remarks,

although a call to the English Bar was ... considered sufficient for admission to practice in most African countries [during the colonial era], the legal education provided by the Inns of Court was—and is not today—in itself adequate training for practice in Africa. (Ndulo, 2002, p. 490 as cited in Manteaw, 2008, p. 916)

The legal training “paid no attention to the problems of practicing in an underdeveloped country with multiple systems of law”. In fact, “English-trained lawyers did not study the customary laws of African countries as part of their education even though customary law was and still is a very important part of the African legal system” (Ndulo, 2002, p. 490 as cited in Manteaw, 2008, p. 916).

English legal training was concerned about private practice rather than public service. The focus was on litigation and thus, nearly all the African lawyers were trained as barristers and not solicitors. The issue of litigation remains the main focus of legal training in Africa. As S. O. Manteaw remarks, “not even the dramatic increase in local legal training initiatives during the independence era could change the profession’s fixation on litigation and private practice” (Manteaw, 2008, p. 917). However, the narrative changed during the period immediately following independence. Many African countries felt the need to establish local training facilities for legal education in Africa.

The period spanning from 1956 to 1972 witnessed the proliferation of faculties across Africa. For example, in 1956, the Council of the University of Ghana (formerly the University College of Gold Coast) accepted a proposal to establish a Department of Law in the college. By April 1972, there were “43 African universities with faculties of law, twelve of them in South Africa, nine in Arab countries bordering on the Mediterranean, and the remaining 22 in the great middle belt of the continent” (Manteaw, 2008, p. 917). The number has grown steadily over the years. With the establishment of local training institutions for legal education, the student flow abroad reduced considerably. It must not be construed that there were no attempts at all by the colonial masters to invest in legal education. In October 1960, the British Government established the Denning Committee (Manteaw, 2008, p. 917)¹ to examine legal education in Africa and to make recommendations for a suitable scheme of training. Specifically, the Denning Committee was [to], among other things:

(a) consider, and report as soon as possible, what facilities ought to be made available to provide any additional instruction and training, either in the United Kingdom or elsewhere, which may be required to ensure that those members of local bars in Africa who obtain their legal qualifications ... possess the knowledge and experience required to fit them for practice in the special conditions of the territories in which they are to practice, with special reference to the following:

(i) the acquisition of the practical experience in addition to academic qualifications.

(b) proffer the means to be adopted in the educational sphere to give the ... [African countries] assistance which they may require in whatever provision they make for the education in Africa of local inhabitants seeking legal qualification.

¹ The Denning Committee was chaired by Lord Denning, a British jurist. The comm...Report of the Committee on Legal Education for Students from Africa, COMND. No. 1255 (1961) [hereinafter, Denning Committee Report].

Denning Committee held the view that African countries should not admit lawyers to local practice just on the basis of British qualifications. It recommended further practical training in local law and procedure. "The Committee further recommended the establishment of local training facilities, and specifically recommended the establishment of a law school in Dar-es-Salaam to serve East Africa". The issue of legal training with local content is a subject to which we shall return later but it is instructive to state that the Denning Committee's recommendations were largely adopted with some variations.

Nonetheless, the recommendations have influenced the system of legal education in Africa. Of particular significance was the proposal that the normal pattern of legal education in the African territories should be a degree in law at an African university followed by one year of practical training at a school of law. This recommendation formed the basis for common law Africa's two-tiered legal education system: academic legal education in a university's law faculty for a Bachelor of Laws degree and subsequent professional legal training in a law school leading to a call to the bar. It is also instructive to state that with the advent of local training institutions, the issue of local content is either missing or has been given little attention. It would appear that the form or structure of legal education in Africa is modelled after the British legal education system. We posit that this wholesale adoption of an educational system impedes progress and aims at churning out lawyers who attempt to solve African problems with European methodology and strategy. At the discussion level in this paper, we shall give attention to this point.

Theoretical Framework

This paper is hinged on two theories: formalism and the general systems theory. Formalism denotes emphasis on form over content. To formalists there is no transcendent meaning to a discipline² other than the literal content created by a practitioner. In effect, formalism is concerned with the rules of the game as there is no other external truth that can be achieved beyond those given rules. Indeed, a critical study of Africa's legal education system reveals a wholesale adoption of the British legal education system in its typical form which is quite alien to the traditional African legal system. Elsewhere in this paper and relying on S. O. Manteaw, the point has been made that British legal training was more concerned with litigation which is still the focus of African legal education.

On the other hand, the General Systems theory, developed by L. von Bertalanffy (1950), postulates that all things (including ideas) have connections with many other things and the significance of any one depends on its relationships with others. Hence, the unit of study should be not a single thing but a system of interrelated objects or ideas. In this way, the emphasis is placed on the connections and processes that link all kinds of phenomena (Chisholm, 1967). It is our proposition that an effective legal education that answers local needs must not focus on form; litigation. Rather it must bring to bear the various possible benefits that are available to legal education and draw the connections and effects which legal education would have on the general developmental agenda of a country. In this regard, the content of the legal curriculum must be revised to reflect local needs and to provide solutions for the country's overall development.

² Examples of such disciplines may include mathematics, law, English among others...

Concept of Development

Development has been conceived in several ways. During the 1950s and 1960s, the term development was simply economic growth. During the 1970s, economic development came to be understood as elimination of poverty, inequality, and unemployment within the context of growing economy (Adjei, 2010). This concept, influenced by the work of Dudley Seers, a British economist (Seers, 1972; Adjei, 2010), would continue to hold sway until the early 1990s. Even though the concept still persists, some scholars suggest that the concept of development must not be seen as a single process but a whole gamut of change by which an entire social system experiences improvement in its various aspects (Adjei, 2010). According to K. J. Adjei, "development must be conceived of as a multidimensional process involving major changes in social structures, popular attitudes and national institutions, as well as the acceleration of economic growth, the reduction of inequality and the eradication of poverty" (Adjei, 2010, p. 104). He argues that such a development must be sustainable. It must meet the needs of present generation as well as future generation.

Nonetheless, the contemporary notion of development is to be found in the work of Amartya Sen. According to him, development is about the ability to function than the availability of commodities. It is about adding value to the lives of the citizenry and the general social structure. Sen (Adjei, 2010; Sen, 1999) argues that development is not measured by what a person has but what a person is or can be. Commenting on this view of development, Todaro and Smith (Adjei, 2010; Todaro & Smith, 2003) opine that development is both physical reality and a state of mind which a society has through the combination of social, economic, and institutional processes, secured to obtain a better life.

To these scholars, whatever the components of this better life are, development must affect society in three principal areas. First there must be availability of basic needs such as food, shelter among others. Secondly there must be an improvement in the living standards of the citizenry such as higher income and better education that answers local needs and thirdly there must be an expansion of economic and social choices available to the individual. For our purpose, the second component is of importance in that Africa's development must take into consideration a better legal education that provides for the multiplicity of Africa's problems.

Challenges to Legal Education in Africa

Under this heading, we take a look at some of the identified challenges confronting legal education in Africa. The list may not be exhaustive some of which may have been mentioned earlier in this study. We also proffer some solutions as we enumerate these challenges.

Focus on Litigation

The curriculum on legal education in Africa is limited in scope and content. It is limited in scope in that it focuses on litigation. It is limited in content because of its failure to address local needs, a point to which we shall return later. Nearly all common law African countries place a heavy emphasis on litigation at the expense of other aspect of legal education such as solicitors or paralegals. There is no clear distinction between solicitors and barristers in Africa's legal education set up. So that legal education in Africa focuses on making the trainee an expert in litigation. In Ghana for instance, one is called to the bar as both solicitor and barrister of the supreme court of Ghana. The Law Faculties are slow in adding to their Law Courses and new areas which are driving the

economies of advanced countries. We in Ghana continue to lament our unpreparedness to fully and exhaustively negotiate international agreement, wherein we can claim to have achieved win-win agreements. There are similar arrangements in Nigeria, Uganda, Kenya, Zambia, South Africa, and many others. It would appear that the court is a necessary point of destination for every lawyer in Africa.

In other jurisdictions such as the United Kingdom and the United States of Africa, there is a distinction between legal trainees confined to office work (solicitors) and those who do courtroom litigation (barristers). The unfortunate thing about this system of legal education with its emphasis on litigation is that it places all legal trainees into one box and presumes that every one of them is fit for advocacy. That is not to say that there are no good advocates in Africa. But litigation is not all there is to legal training. As indicated by Manteaw there is a great sense of pride for African lawyers who appear in court to litigate. The net effect is that an individual with an LLB degree from a recognised institution must, as a matter of necessity, enter the law school for professional law course leading to a call to the bar. This explains why contemporary African legal education system is a two-tiered one. One must first acquire a Bachelor of Laws degree from a recognised institution and compete with several other applicants for space at the school of law.

For example, the Ghana School of Law and the Kenyan School of Law are the converging points for persons wishing for professional law course in Ghana and Kenya respectively. In essence, Africa's legal education set up is such that an LLB degree is without value unless one proceeds to the School of Law. Legal education at the professional level provides students with advocacy skills and courtroom procedure. In the subsequent paragraphs, we shall do a content analysis of the courses offered at the professional level. This will not only reveal how African legal education is fixated on litigation but also how the focus on litigation makes no room for local content.

Absence of Local Content

The scope of the LLB programmes in various African law faculties is undoubtedly wholesale adoption of the British system. It is only now that some faculties are beginning to modify their programmes by adding some local content. But generally, from the faculty level to the professional level, legal education has lost touch with local reality. Using Ghana, Nigeria, Kenya, and South Africa as examples, the core courses at the LLB level include but are not limited to Criminal Law, Contracts, Torts, International Law, Equity and Succession, Constitutional Law, Administrative Law, Immovable Property, Jurisprudence, Company Law, and Commercial Law (Manteaw, 2008). The elective courses include but are not limited to Intellectual Property Law, Conflict of Laws, International Human Rights Law, Family Law, Banking, Insurance, Labour Law, Petroleum Law, Natural Resources Law, Industrial Law, and Law of Taxation (Manteaw, 2008). Even though some of these courses may have some local element, as for example Nigerian Land Law, largely these courses are modelled after the British approach.

In fact even some of the courses which have somewhat local content are optional such that the student can exercise a discretion as to which ones to audit. This situation is not any better even at the professional law level. Nearly all the African countries have one School of Law providing professional legal education. One may cite Ghana, Nigeria, and Kenya as examples. Ambitious LLB degree holders wishing to be called to the bar must end up at the School of Law. The curriculum at this level focuses on preparing candidates for advocacy. As a result,

there is emphasis on procedure and rules. Again using Ghana, Nigeria, and Kenya as hard working examples, typical core courses at the professional level include but are not limited to Civil Procedure, Criminal Procedure, Law of Taxation, Advocacy and Legal Ethics, Legal Drafting and Conveyancing, Commercial Law, Law of Evidence (Manteaw, 2008), and Company Law. In Ghana, to be specific the core courses at the School of Law include Criminal Procedure, Company Law, Law of Evidence, Legal Accountancy, Interpretation of Deeds and Statutes. The elective courses are Industrial Law, Law of Insurance, and Legislative Drafting (Manteaw, 2008).

The point ought to be made that the duration for the professional law course in these countries has undergone a series of modifications but the maximum is two years. In Ghana, for example, the period for professional law course has been changed for a considerable number of times. There was a time when professional law course lasted for two years. It was later changed to one year and very recently changed again to two years. There also exist different arrangements for persons who may have acquired legal education outside their countries of origin and wish to robe themselves into professional legal education. In Nigeria, for example, persons with law degrees obtained outside Nigeria are required to pass Nigerian Legal system, Nigerian Land Law, Nigerian Criminal Law, and Nigerian Constitutional Law at the professional level. The duration for such students is two years (Manteaw, 2008).

It is clear from the foregoing that the curriculum for legal education in Africa was “an embryonic educational system estranged from local needs” (Dayal, 1984, p. 92). Even those which are locally inclined such as Environmental Law and Natural Resources Law are inundated with foreign cases such that the typical African law student is not adequately prepared to appreciate the law on his immediate environment. There is inadequate relationship between these courses and the local content needs of these countries. The net effect is that African law schools have over the years churned out lawyers who are not sufficiently trained to appreciate the reality of their countries situation vis-ab-mi. the legal training with reality. Ironically, these lawyers know the law and how it applies to foreign situations but not with local needs.

Structural Defects

Professional legal education in Africa is hampered by structural defects. As it has already been pointed out, there exist a multiplicity of Law Faculties in Africa that offer LLB degrees. Like any other academic program, the LLB degrees are offered by both public and private Universities. For example, there are about 14 law faculties in Ghana and over 30 law faculties in Nigeria alone. However, the professional aspect of legal education in most of these African countries is offered by Law Schools specifically built for that purpose. They are mostly state-owned and are ran by statutory bodies. Using Ghana as an example, the General Legal Council, a body established by an Act of Parliament, is empowered to put in place a medium for selecting candidates for professional law course. Evidently, nearly all these Law Schools were established shortly after independence when it dawned on us as people to train more African lawyers to occupy key government institutions. Admittedly, in view of the numbers during that epoch, not many of them were built. For example, there exists only one Ghana School of Law which provides the professional legal education.

Similarly, the Nigerian Law School remains the only law school providing professional legal education for LLB degree holders (Manteaw, 2008). Thus, these schools have over the years become the only points of convergence for anyone seeking professional legal education. Since its establishment in 1958, the Ghana School

of Law has not undergone any significant expansion despite the continual increase in the numbers seeking admission to the Law School. Attempts to expand it in 1978 failed because of political instability.³ Subsequent governments have not shown the desired concern in this regard. To deal with the number of candidates seeking admission to the Ghana School of Law, the General Legal Council, in 2012, introduced an entrance examination, not only as a means to select the best but also as a way to make do with the limited space. There exists a backlog of close to 2,000 LLB degree holders seeking admission to the Ghana School of Law. Prior to this, a satellite campus was established at the Kwame Nkrumah University of Science and Technology campus in 2010. This was followed by another satellite campus at the Ghana Institute of Management and Public Administration (GIMPA) in 2015. However, the main campus of the Ghana School of Law is at Makola next to the Supreme Court of Ghana in Accra. The school has four permanent lecturers with the rest being part-time lecturers. Evidence of the structural defects is also to be seen in the limited space students have for academic work. These expositions are necessary so that we may appreciate why it is important to reform legal education in Ghana in particular and Africa as a whole.

The Case of Private Practice

Africa's professional legal education model like the Western model rather leans towards private practice (Manteaw, 2008). It is estimated that there are about three thousand lawyers in Ghana for a population of a little over thirty million (30,640,801).⁴ Many of these lawyers are to be found in urban cities such as Accra, Kumasi, Cape Coast, Sekondi-Takoradi, Sunyani, Ho, Tamale among others. What is even troubling is that majority of the lawyers in Ghana are into private practice. The situation in Nigeria is slightly better than Ghana though with a similar need for lawyers. According to the Deputy Director of the Nigerian Law School, Felicia Eimunjeze, since its inception in 1992, the Nigerian Law School has not trained up to 70,000 lawyers.⁵ A similar situation exists in other common law African countries. The public sector does appear unattractive to many of these lawyers. The reasons are unattractive financial reward and professional independence. Lawyers in the public sector have fixed salaries. Professionally, they are under the instruction of the institutions they work for. Conversely, private practice provides professional freedom and is financially rewarding. The few who are in the public sector are overwhelmed with work to the extent that they have little time to explore the impact of law on development.

Reliance on Theory

Another obvious challenge to legal education in Africa is the over reliance on theory (Manteaw, 2008). From the faculty to the professional level, the major mode of instruction is the lecture method. This medium of instruction focuses on teaching students the principles of law. Its application is often missing. There is near absence of mootings in most African law school curricula. Rather, mootings are used for competition purposes. Since the legal profession is an apprenticeship and thrives on practice, one would have thought that there would be a number of interventions which would equip students with knowledge on practical skills. Such arrangements discourage rote learning among students. Scholars such as Stephen Manteaw, Shiv Dayal, and Muna Ndulo have

³ Sam Okudzeto, PM Express, Joynews on Multi TV.

⁴ <https://www.worldometers.info/world-population/ghana-population/>. Accessed on 3rd November, 2019.

⁵ <https://www.thenigerianvoice.com/news/27276/since-1962-law-school-has-not-trained-up-to-70-000-lawyers.html>.

proposed the establishment of more Legal Clinics which would offer students practical skills of the legal profession and bring them closer to societal reality. Such a proposal, though laudable, for it to meet with acceptance, African governments must be made to understand the affinity between law and development. In the subsequent paragraphs, we shall turn attention to this dichotomy and argue that Africa's development depends to a large extent, the type of legal education instituted and by extension, the type of lawyers produced.

Law and Development

Until recently, studies on the dynamics between law and development were almost non-existent. The reason is, although newly independent African countries were driven by the need to train more lawyers to man certain important government institutions, the type and focus of the legal education provided was (and still is) detached from the African problems. As indicated above, the legal education developed was a carbon copy of the Western models (Dayal, 1984) with its emphasis on litigation. The legal curriculum was alien to African needs and aspirations because it was developed in entirely different social, economic, and cultural context (Dayal, 1984). In simple terms, the "legal legacy was one of extreme complication, fraught with internal conflict... without considerations of its suitability to local conditions" (Gower, 1967, p. 9; Bentsi-Enchill, 1969, p. 4j as cited in Dayal, 1984, p. 92). Consequently, the essence of how law could be used to improve Africa's impoverished situation was missed. The received law was unfit for the emerging needs of development (Dayal, 1984; Allott, 1963, p. 196). With time, many scholars have come to appreciate the importance of law on Africa's development. President Kenneth Kaunda, in an address to the Law Society of Zambia in 1979 observed:

I consider law to be perhaps the most important of all instruments of social order because without it the whole structure of society can but inevitably collapse. ... It is the means by which order within society is maintained and society itself preserved. The law ... is not something independent of society it regulates and purports to preserve ... it would be presumptuous for anyone to criticise the concepts and rules of some other society without the deepest knowledge and understanding of the history, traditions and present day character of that society ... law of any society must inevitably reflect the character and needs of that society. ... Neither the character nor the needs of any given society can remain static, and if the law is to fulfil its proper function it must keep pace with the changes ... if law is to be an effective instrument of social order it must be a stabilising influence, but it must be flexible and it must be progressive, else it will hinder society in its progress and development instead of advancing it. ... (Dayal, 1984, p. 91)⁶

President Kaunda's observation is instructive in that it points to law as the pivot around which the wheels of development revolve. In his view, the law of any society must, as matter of necessity, reflect the character and needs of that society. According to him "if the law is to fulfil its proper function it must keep pace with the changes" (Dayal, 1984, p. 91). Law must have contemporary relevance proffering solutions to contemporary challenges. He sees the lawyer as "better fitted than anyone else to work out solutions to the social and economic problems of society". President Kaunda argues that if the lawyer "is to be able to participate in the development and advancement of the economic and social well-being of its members", [he or she] must alter "the [(received or imposed colonial)] law ... to the needs of society" (Dayal, 1984, p. 91).⁷

⁶ The University of Zambia, speech of His Excellency, the President, Dr. K. D. Kaunda, Chancellor of the University of Zambia, at the 11th graduation ceremony held on 20th October, 1979, pp. 1, 9-10, 11.

⁷ President Kaunda, *supra*.

However, a lot of it depends on the type and focus of legal education designed to produce lawyers for the African needs. Any curriculum designed for legal education in Africa must factor in the development agenda of the nation. Indeed as argued by Shiv Dayal, in most of the developing countries of Asia, Africa, and Latin America, law must be used as an instrument of change and development. In short, law must be an ally of economic and social development (Dayal, 1984). The point ought to be made that the contribution of law on development particularly for the African communities, does not come across as a recent discovery. In fact a Report on the Harvard International Legal Studies Programme pointed out this as far back as 1961.⁸ Law and development are interdependent with one influencing the other or fostering changes in the other (Dayal, 1984).

There is certainly need to develop objectives of a legal education which has the society in perspective. That is important because “law is a sociological phenomenon inevitably conditioned by the indigenous contemporary social context, and felt and desired social needs in changing plural societies of the developing world” (Dayal, 1984, p. 92). But how visible is the link between law and development? Theoretically, Dayal, Hurst, Unger, and many other scholars have provided some insight. Law, within the context of development, is thought of

as an aspect of social organisation ... not just social technology ... as a system of norms and values ... as a cultural system ... (which) reflects, reinforces and often mutates and innovates ideas and values ... a system of social relationship, roles, statutes and institutions interacting between and among the makers, interpreters, enforcers, compliers, breakers and beneficiaries of law. (Baxi, 1978; Unger, 1976; Balbus, 1977 as cited in Dayal, 1984, p. 96)

Unfortunately, as already indicated, the received law as well as the legal education inherited as colonial legacy remains unsatisfactory for the African situation. As Dayal points out,

the courses did not reflect the needs of the society and the training of law-men was based on doctrinaire teaching geared to an adversary setting catering for litigation for the fortunate few at the cost of social justice to the deprived many. (Dayal, 1984, p. 97)

The net effect is that many of the law faculties in Africa are duplicates of the Western models which are limited in “outlook, content, methods, research and continuing development and have not viewed legal education from the perspectives of developmental policies and needs in the national context” (Dayal, 1984, p. 97).⁹

There is no shortage of text books by foreign authors which are heavily relied upon in African law schools as teaching materials. Not that there is something wrong with foreign authors but these teaching materials are designed from a “different legal culture” and within “different conditions in society”. According to Dayal, and we agree with the author, “there is almost a conspicuous absence of: (i) ‘indigenous body of legal literature which examines law in a developmental socio-economic context’; and (ii) ‘localized teaching materials, which in turn require research into the local environment of the law’” (Dayal, 1984, p. 98).¹⁰ Even in circumstances where text books and teaching materials are produced by African authors, they

follow largely the traditional British pattern of doctrinal treatises imparting straight law learning—the lawyer’s law—of a strictly legalistic nature with almost little or no reference to social objectives, needs and perspectives or to highly relevant and basically important references to allied non-legal materials. (Dayal, 1984, p. 98)

⁸ Harvard Law School, International Legal Studies, Report of the Director, 1954-1961, at p. 3.

⁹ Legal Education in a Changing World (1975) hereafter referred to as I.L.C., Education as cited in Shiv Dayal, *supra*.

¹⁰ I.L.C., Education, *supra*.

The pedagogy becomes a give and takes affair in which the teacher stands at one end of the pole giving instruction while the student receives at the other end. In short, education, in this regard, is reduced to “an act of depositing, in which students are depositories, and the teacher is the depositor”. The teacher instead of communicating, “issues communiques and makes deposits which the students patiently receive, memorize and repeat” (Freire, 1975, pp. 45-46; Dayal, 1984, p. 99). This type of pedagogy is “doctrinal and didactic”, “formalistic”, “lacking in developmental perspectives” which limits efforts to address “socio-legal reality and tangible development problems in the specific cultural context” (Dayal, 1984, p. 99).¹¹ In effect, law students are experts in theory but novice in practice. They have little or no experience as to the operational impact of the law on real social problems. The legal education in Africa therefore ought to be thoroughly examined. Such an examination must consider outlook, content, and pedagogy. Once examined and the curriculum properly revised to include local content, legal education (and for that matter law) would influence Africa's development in a relevant and efficient way. The type of legal education provided would factor in the needs of society. As the Indian Supreme Court observed in *Ratanlal*:

The imperatives of independence and the jural postulates based on the new value system of a developing country must break off from the borrowed law of England received sweetly as justice, equity and good conscience! We have to part company with the precedents of the ... period tying our non-statutory area of law to vintage English Law christening it “justice, equity and good conscience”. After all conscience is the finer texture of norms woven from the ethos and life style of a community....Where law is static and suppressive in a cosmos which is democratic and dynamic legality becomes illegitimate and archaic and the legal system broken and ignored by the community. ... The dynamic rule or law (implies that) economic growth without distributive justice is a dehumanised solution. (Dayal, 1984, p. 96)

The Court's remark when examined to its full effect, one would realise that law and development are undeniably close. There is therefore a sense in which any comprehensive legal education curriculum in any society must mirror its developmental agenda. The curriculum must be the conscience of society driving it towards development. In this regard, there must be a conscious effort to give space for local needs and clearly reflecting the values of society. As the Court puts it, “conscience is the finer texture of norms woven from the ethos and life style of a community” (Dayal, 1984, p. 96). Writing on legal education in 1983, Derek C. Bok had this to say:

A vigorous school should address the larger problems of its calling, serving as a conscience to its profession and a stimulus for change. In fulfilling this function, a faculty must be knowledgeable enough to speak convincingly to practitioners, detached enough to see the blemishes of their profession, skilled enough in research and analysis to explore each defect thoroughly and offer thoughtful suggestions for reform. These responsibilities are always important, but particularly so today when the public is disenchanted with the professions and highly critical of their performance. (Bok, 1983, p. 570)

Today in Ghana, the public is disenchanted with Legal education and the contribution made by the legal profession. We emphasise that if we had all appreciated the link between Law, training of Lawyers and the work of the Lawyer and our overall development, perhaps it would not have become a public debate whether a Law school established in the early 1960 and its methodology and strategy should be overhauled or at least remarkably improved upon. We make this assertion on the backdrop of the mass failures recorded at the 2019 Ghana School

¹¹ I.L.C., Education, *supra*.

of Law entrance examination. Out of a total of 1,820 candidates who sat for the examination, only 128 representing 7% passed the examination. Students who sat for the examination demonstrated and petitioned relevant bodies including Ghana's president, H. E. Nana Addo Dankwa Akuffo Addo to investigate the mass failures. We are yet to see results but this, like similar failures in the past, has led many jurists and other stakeholders to question the instrument for selecting students for professional law course.

Popular opinion suggests that the examination, as an instrument for selecting the best students for profession law course, does not achieve its purpose and that some other modes should be explored. At least, it is public knowledge now that many of the best students from the faculties usually do not pass the examination. The General Legal Council has maintained that it would not lower the standards just to satisfy the existing need for more lawyers in Ghana. It would appear that the General Legal Council assumes that quality is synonymous to numbers: The smaller the number, the better the quality. In our view, this is quite misleading. There can be many good lawyers as well as many bad lawyers. The other side of the coin is also true. The argument must not be about numbers. The General Legal Council must be more concerned about making legal education accessible, affordable, and liberal while maintaining the standards. This would have far reaching implications for Ghana as a developing country.

Discussion, Conclusion, and Recommendations

In order to give meaning to the discussion and to situate it within context, it is important to state beforehand that reference is made to some of the issues already discussed in this paper. Our analysis leans towards the Interpretivist Paradigm because we are dealing with a social reality (Glesne, 2011). Such an approach allows the use of language to make meaning out of peoples' ideas, actions, and interactions in a specific social context. Beyond the understanding this approach provides, it brings to the fore, the patterns between variables. This is particularly important as we seek to make bare the link between law and development.

We set out, largely, to investigate the state of legal education in Africa and to explore the affinity between law (for that matter legal education) and development. Available evidence suggests that the state of legal education in Africa leaves much to be desired. The wave for reforms is yet to hit many African countries. In recent times stakeholders within the legal educational sector including students have called for reforms. Ghana is an example of countries where there appears to a radical and urgent move for reforms.

The need for reforms stems from the difficulty in assessing professional legal education in many African countries. Additionally, the influence of law or legal education on Africa's development has not been adequately explored. It is clear that the two are completely detached from each other. The obvious reason, as we have pointed out, is that the type of legal education in Africa is unsuitable for the African context. It is alien to the African needs and offers little or no hope of development. This is because it is a carbon copy of the Western model. It was lifted and adopted wholesale without recourse to Africa's peculiar situation. This, undoubtedly, gives credence to the theory of formalism which emphasises form over content. Admittedly, the curriculum on legal education in Africa is limited in scope and content. It is limited in scope in that it focuses on litigation. It is limited in content because of its inability to address local needs. The LLB core courses include but are not limited to Criminal Law, Contracts, Torts, International Law, Equity and Succession, Constitutional Law, Administrative Law, Immovable Property, Jurisprudence, Company Law, and Commercial Law. These have little relevance for the

African situation. Of prime importance to this discussion is the fact that classical British legal system depended heavily on litigation. Nonetheless, the English have moved to a more liberal approach.

It would seem that legal education in nearly all common law African countries has not succeeded in weaning itself off the rather conservative approach of litigation. Conservatism kills initiatives and innovations. Given that the current legal education approach in Africa has not served Africa well, there is a sense in which there ought to be reforms to suit local context. Such reforms must factor in the development agenda of Africa. We recommend that there must be a strong political commitment coupled with dynamic collaboration with academia aimed at making legal education flexible, accessible, and relevant to contemporary needs. Drawing from the general systems theory, we argue that an effective legal education that answers local needs must not focus on form; *litigation*. Rather it must bring to bear the various possible benefits that are available to legal education and draw the connections and effects which legal education would have on the general development agenda of the country.

When we as a people fully appreciate the role of the Legal profession and Law in overall development, then regular review of the Law and the Legal profession in all aspects will begin to come to us naturally just as the need for improvement in our life styles and standard of living comes to us naturally.

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