Objectives in Legal Education

IN every country there is a tendency for those members of a profession who have attained practical success to regard the training which they themselves underwent as sufficient, and even as vital, for future entrants to their profession, and to view with suspicion any elements of education for that profession which may at first sight appear to have little immediate relation to the routine of their daily work. But it is doubtful whether this inclination to invest the existing means with the dignity of ultimate ends is better illustrated than in the lack of interest shown by most lawyers in Ceylon in the subject of legal education. It is true that a somewhat similar attitude of complacent apathy on the part of the legal profession was evident about half a century ago in the United Kingdom, Canada, Australia and the United States of America, but today the picture in these countries is very different.

In these countries there now exists an extensive literature relating to matters concerned with legal education and its problems[1]; at meetings of Bar associations and other professional organisations such matters are discussed in an informed manner, and many studies have been published dealing with the functions which a lawyer has to fulfil in modern democratic society and how education for those functions may best be provided[2]. In the belief that Ceylon can profit by the errors and successes of these other countries which have for years been experimenting with new ideas in legal education, I propose in this article to examine the objectives of legal education as they have come to be understood today in more progressive countries. We shall see that many of the criticisms, express or implied, of modern legal education are due to misconceptions by the critics of what legal education is trying, or should try, to accomplish.

The chief charge made against the legal education provided by the law schools in the English-speaking countries[3] is that it is not practical

1. Two journals in English devoted entirely to legal education are the "Journal of the Society of Public Teachers of Law" (hereafter cited as J.S.P.T.L.), published biannually in England, and the "Journal of Legal Education" (cited as J.L.E.), published quarterly in the U.S.A.

2. See, e.g., "The American Lawyer, A Summary of the Survey of the Legal Profession" by A. P. Blaustein and C. O. Porter (Chicago, 1954), "Bar Association Organisation and Activities" by G. R. Winters (Ann Arbor, Michigan, 1954), "Legal Education in the U.S." by A. J. Harno (San Francisco, 1953), "Lawyers and the Promotion of Justice" by E. L. Brown (New York, 1938), "Lawyers, Law Schools and the Public Service" by E. L. Brown (New York, 1948), "Law Training in Continental Europe" by E. F. Schweinburg (New York, 1945), and "The University Teaching of the Social Sciences: Law" (UNESCO, Paris, 1954).

3. On the Continent the law school training is expressly non-professional and designed to be supplemented by subsequent professional apprenticeship. See n. 13 at p. 95 below.

enough, that the law school graduate is not adequately trained in the basic skills and techniques required for immediate application in practice. In order to understand the historical background of this criticism it should be mentioned that in England and the other countries of the English-speaking world, including the United States, legal education began as apprentice training, which stressed practical skills, and for many years continued to take that form. "If the question whether English law can be taught at the Universities", said Dicey[4] in 1883 "could be submitted in the form of a case to a body of eminent counsel, there is no doubt whatever as to what would be their answer. They would reply with unanimity and without hesitation that English law must be learned and cannot be taught and that the only place where it can be learned are the law courts and chambers".

Now it must be admitted that, at a time when the law was relatively simple and compact, the apprenticeship method of learning a craft, by participating in its actual activities under the supervision of an experienced practitioner, did have considerable merits in its favour, provided the supervisor had the time and the inclination to carry out his duties towards his apprentice. But it has come to be recognised in most countries that the law is now too complicated to be left to be acquired by the embryo lawyer haphazardly, in shreds and patches as it were, without it being systematically presented to him as an ordered whole. Consequently, the method of apprenticeship is no longer considered adequate *by itself*, although of course it is still used, and rightly valued, where it supplements or succeeds more regular and systematic instruction. Even in the United States where (unlike in most Continental countries and Ceylon[5]) the majority of states do not require any period of apprenticeship before admission to the profession[6], it is now generally admitted that legal education cannot and must not be confined only to subjects and techniques involved in the pure practice of the law[7].

If, then, legal education is not to be directed only to developing professional proficiency, how are its objectives to be defined ? Many answers

4. quoted by Holdsworth in "Some Lessons from our Legal History", 1928, at p. 171.

5. In England apprenticeship is not compulsory for those seeking admission to the Bar, although a period of service under articles is required before admission as a solicitor.

6. Delaware, Pennsylvania, Rhode Island, Vermont and New Jersey are the exceptions.

7. In the U.S.A. in five states graduates of "approved" law schools have the "diploma privilege" of admission to the bar without examination; and the majority of states *require* from candidates for the examinations for the state bars a degree in law from an approved law school, although even in those states which do not have this requirement most candidates in fact prepare for the bar examinations by graduating at an approved law school. The approval lists of most states follow the list of approved law schools of the American Bar Association. Of a total of 165 law schools, about 125 have been approved by the Association.

have been given to this question but none of them puts the matter better than that given by Dr. Cecil A. Wright[8]. "The three big objectives of a university law school", he says[9], "are (1) education in the *qualities* that should be found in a legal practitioner ; (2) education that will train a man not merely in the work of solving problems of individual clients but of the society in which he lives, and (3) to act as a centre of research, criticism and contribution to the better understanding of the laws by which societies are held together". As bearing on the first of these objectives, Dr. Wright endorses the following list[10] of the qualities which law school training should seek to develop : (1) Fact consciousness—an insistence upon getting the facts, checking their accuracy ; (2) A sense of relevance—the capacity to recognise what is relevant to the issue at hand and to cut away irrelevant facts, opinions and emotions which can cloud the issue ; (3) Comprehensiveness—the capacity to see all sides of a problem and all possible ways of approaching it ; (4) Foresight—the capacity to take the long view, to anticipate remote and collateral consequences ; (5) Lingual sophistication—an immunity to being fooled by words and catch phrases, a refusal to accept verbal solutions which merely conceal the problem ; (6) Precision and persuasiveness of speech—that mastery of the language which involves (*a*) the ability to state exactly what one means, no more no less, and (*b*) the ability to reach other men with one's own thought, to create in their minds the picture that is in one's own ; and finally, pervading all the rest and possibly the only one that is really basic, (7) self-discipline in habits of thoroughness, an abhorrence of superficiality and approximation.

Now it is clear that if a sound legal education must be directed to developing all these qualities, such an education can only be a life-long undertaking. No law school in the short space of the three or four years available to it can possibly undertake to confer on its graduates all these diverse attributes. The process of imparting the seeds of these qualities in the mind of the student must have been begun long before admission to law school, and it must be continued not only in law school but also after graduation—in fact so long as he remains a lawyer. Thus, in the United States, legal educators have pointed out that many problems of legal

8. Dr. Wright, after being connected for over twenty-two years with Osgoode Hall, the professional law school of the Law Society of Upper Canada, resigned with three of his colleagues in protest at the Society's illiberal attitude to legal education and was appointed Dean of the School of Law of the University of Toronto. The dispute at Osgoode Hall is discussed in "Should the Profession Control Legal Education ?" 3 J.L.E. pp. 1-38.

9. in an address reproduced in 2 J.L.E. p. 408 at p. 412.

10. given by Professor Leach of Harvard University in an article in I J.L.E. at pp. 30-1.

education arise out of defects in pre-legal education ; and they have called attention to the failure of schools and colleges to train the student, more especially in the three or four years before he joins law school, to assimilate masses of information, to reflect on what he has learned and to express himself in speech and in writing in clear and forceful English[11]. American legal educators have also stressed the importance of making arrangements for " Continuing Legal Education " after graduation from law school and even after admission to the profession[12].

Realisation of the fact that law school education provides only one phase of a lawyer's education—even if it be the most important phase that will ever be compressed into so short a period as three or four years—has in recent years led to a re-appraisal of the kind of training on which the law schools should concentrate in the period that the student spends with them. The result of much educational discussion and experiment has been to show that there are some things which a lawyer will learn, or can only learn, after he joins the profession, and others which he will not be likely to learn except in law school, and that it would be a waste of time and effort to try in law school to provide as part of an already overcrowded curriculum things of the former category at the expense of those of the latter. For example, not all practical skills are equally susceptible of being adequately developed in law school : thus, efforts to cultivate legal draftsmanship have generally been found to be more successful than efforts to teach advocacy, because attempts to imitate in law school moot or practice courts the actual conditions of trial work have very often fallen flat. Therefore, while by no means oblivious to the importance of a training in practical skills, most legal educators are agreed that the best place for the student to learn many aspects of the technicalities of practice is after leaving law school, during apprenticeship or in actual practice, while the primary responsibility of the law schools is to inculcate a scientific background of legal knowledge which the student would find it difficult or impossible to obtain after admission to the profession[13].

11. See generally Vanderbilt, " A Report on Prelegal Education", 25 New York University, L.Rev. 199.

12. Such courses for lawyers who wish to keep up to date with their law were pioneered by the Practising Law Institute and are now also provided by the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, and by certain state bar associations and law schools. See, e.g., "TheWork of the Practising Law Institute : A Lawyer's Education Never Stops " in A.B.A. Journal Vol. 38 p. 833 and " Continuing Education of the Bar " by Sidney Post Simpson 59 Harvard L.R. 694.

13. This has long been recognised on the Continent. " Law training on the Continent is expressly and consistently organised as a compound of two parts : (1) a non-professional course of study in the law department of a university ; (2) a professional apprenticeship training in courts, administrative departments, law and notary offices. Both parts are of equal importance ; neither does nor can

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Quite apart from the consideration that it is wiser for law schools to concentrate on those things which they are fully qualified to handle, there are several reasons why it would not be possible for legal education to be directed only to developing professional proficiency and the technical skills of practice. In the first place, it would not be correct to assume that all law students will go into practice or always stay in practice : many of them will on graduation take, or later turn, to trade, commerce, public administration or political life, for which a scientific training in basic principles will be of more value than a training purely for professional competence. Further, an increasing number of students in the English-speaking countries — or at least in those English-speaking countries in which law is not a post-graduate discipline [14]—have in the last thirty or forty years been taking to the study of law with no practical objective in view but because of its value in training the mind and its cultural importance as one of the foundations of civilised life—a view which has for centuries led to law being a favourite subject of university study on the Continent of Europe[15]. It will no doubt surprise many in Ceylon to be told that Oxford has about five hundred, and the University of Paris more than seventeen thousand, students reading law, only a small fraction of whom will take to the practice of the profession[16].

In the second place, even if we consider those graduates of the law schools who do go on to practice, there is no one type of practice which the law schools can take as the standard for which they are to prepare their students.

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yield complete results without the other.... In contrast to the American Law school the Continental law faculty, ... declining any attempt to rear lawyers,.... strives for a systematic, genetic, and thus scientific representation of the totality of legal science, with no other proximate objective .... The practical work, which on the Continent follows the University section of the training, represents not only planned and required education, but in fact the first professional education the Continental lawyer gets, and the chief source of his professional knowledge. Its duration is prescribed and its course specifically directed". E. F. Schweinburg, " Law Training in Continental Europe " (1945), pp. 9-10.

14. Where a first degree in law can be taken only after graduation in another subject—as, for example, in the United States of America or in South Africa—it is understandable that few students who do not intend to practise will, because of financial considerations, take to the study of law.

15. In Europe law schools played a prominent part in the 11th and 12th Centuries in the revival of learning after the torpor of the Dark Ages. The fame of the law schools of Italy, and especially of Bologna and its law teacher Irnerius attracted multitudes of students from all over Europe, even from distant Britain. They carried back to their homes the new legal gospel and spread it abroad either as judicial and administrative officials in the public service or as teachers in the new universities which rapidly sprang up throughout Western Europe. Some acquaintance with the law was regarded as part of the training for public life and for the educated classes generally right down to the 16th or 17th Century. " The influence of Bologna and of the universities generally", says H. Rashdall " meant the influence of the lawyer-class upon social and political life" (" The Universities of Europe in the Middle Ages", ed. Powicke and Emden, 1936, p. 260).

16. It has been estimated that even of those domiciled Britishers—to leave out of account foreigners —who are actually called to the Bar in England only one-third go on to practice.

In the complicated economic and social conditions of modern society the conception of the lawyer as primarily an advocate and of case law as the typical source of law has become outdated. Legislation has now become the preeminent instrument for law-making and in many countries only a comparatively few members of the profession now engage in trial practice or appellate court work. Other functions of the lawyer, such as counselling, planning, negotiating and drafting, which involve quite different mental aptitudes and skills, and new subjects unknown or at least not commonplace a generation or two ago have assumed an importance for the lawyers of the present generation which they did not have for their predecessors. Further, the lawyer today is often called upon to advise clients on matters on which other disciplines besides law impinge—for example, economics, politics, sociology, or psychology ; and law schools in other countries have agreed that they must attempt to do something about the integration of law with the other social sciences[17], although there is yet some difference of opinion as to the best way of securing this object. The new fields of practice which are thus constantly opening out today make it likely that the products of the modern law schools will be called upon in their practice to turn their attention to aspects of the law of which little or nothing might have been learned in law school[18].

In these circumstances, the law schools have come to realise that in the three or four years available to them all they can hope to do is to provide a fundamental basis of training for law which can later serve as a point of departure for the development of special subjects, interests and skills. The capacity for adaptation to new tasks and the ability to educate himself to meet constantly changing demands have been described[19] as outstanding

17. As far back as 1897 Holmes had said " For the rational study of the law the blackletter man may be the man of the present but the man of the future is the man of statistics and the master of economics " (10 Harvard L. Rev. at p. 469).

Compare Lord Sankey quoted in 1933 J.S.P.T.L. at p. 23 : " The Courts are becoming more and more concerned with great social experiments. Law joins hands as never before with problems in economics, problems in political science, problems in the technique of administration. It is important that the curricula of our law schools should send out lawyers trained to appreciate the meaning of these relationships. They must shape the mind to a critical understanding of the foundations of jurisprudence. Unless the training we give supplies these perspectives, there is grave danger that the lawyer will not prove adequate to the big problems he has to help in solving. We are now on the threshold of an epoch of profound legal transformation. Our educational methods have to breed a race of lawyers able to utilise the spirit of law reform for the highest uses. They have to teach the importance at once of stability and change. To do so they must know not only how to grasp the philosophic foundations of those decisions. We must also turn out lawyers with a courage to criticise what is accepted, to construct what is necessary for new situations, new developments, and new duties both at home and abroad". Compare also Dr. R. M. Jackson quoted in n. 31 at p. 101 below.

18. Compare n. 20 at p. 98 below.

19. Preliminary Statement of the Committee on Legal Education of the Harvard Law School (1947) at p. 6.

qualities of the successful lawyer. Modern legal education, therefore, concentrates on providing the background and the method of approach rather than on merely imparting information[20], believing that even for the student who is going to practice it is more important to acquire the habit of mind which can get to the bottom of an unfamiliar subject than to acquire a merely factual knowledge of details[21]. "Competence in the practical pursuits of the law", it has well been said[22], "is promoted far more by an understanding of the law's underlying purposes and theories than by acquaintance with tricks of the trade"; and to those exponents of practice who regard theory with serene indifference if not positive contempt a great American judge has this to say[23]: "Theory is the most important part of the dogma of the law as the architect is the most important man who takes part in the building of a house.....Theory is not to be feared as unpractical for, to the competent, it simply means going to the bottom of the subject".

There will, of course, be many things that a young graduate just out of a law school which has fulfilled its proper functions will still have to learn, and too often critics of the law schools unfairly judge him by the tests that should be applied only to the experienced practitioner. But the

20. "Chief Justice Stone....declared towards the close of the 1941 term of the Supreme Court that since October he had examined 1,200 cases, none having anything to do with what he had studied in law school. Yet he was completely prepared. 'I am of the opinion' he said, 'that it does not matter so very much what subject is studied, if it has good legal material of current importance'" (1. J.L.E. at p. 538).

21. "In the actual practice of the law, that which distinguishes the master-craftsman from the mere competent journeyman is the comprehension of his art as a coherent whole. No man knows all the law; after lifelong experience the practitioner will frequently have to turn his attention to aspects of it which are comparatively unfamiliar, and indeed, not seldom to 'unsettled' portions of it for which mere appeal to authority will not suffice; but he who has imbibed the scientific spirit of the law will see his way to the heart of the matter, while the empiricist, however adroit, will be groping in a murk of minutiae. That is what is meant, in the concrete application of law, by a 'grasp of principle' or a 'legal instinct', and, even from the most severely 'practical' point of view, it is of infinitely higher value than ready mechanical proficiency". C. K. Allen, "Legal Duties" 1931, pp. 22-23.

Cf. Sir Wilfred Greene, Master of the Rolls, in 1936 J.S.P.T.L. at p. 11: "If the advocate has a well-grounded knowledge of the science of law and its principles, he is able to deal with what is one of the most difficult situations which arise in practice, namely, that in which, as the result of the way in which the facts emerge, or of the construction which the Court may be disposed to place upon a document, the principles applicable to the case turn out to be quite different from those which he had supposed. It is here that a real instinct for principle is of the greatest value. As the case proceeds, the advocate, in some department of his mind, which often has to operate unconsciously, appreciates the turn that the case is taking, realizes that he must rearrange his ideas at short notice, and is able to deal with the case in its new shape and to relate it to the new principles under which it appears to be falling". Holdsworth, citing this passage, adds ("Some Makers of English Law", 1938, p. 292) that "the same considerations apply equally to the judge who must weigh the evidence, the legal consequences which follow from the facts as found...., and the opposing submissions of counsel on the points of law raised by the facts so found".

22. Sidney Post Simpson in 49 Harvard L. R. at p. 1073.

23. O. W. Holmes, Jr., (1841-1935), Judge and later Chief Justice of the Supreme Court of Massachusetts and later still Associate Justice of the United States Supreme Court, in 10 Harvard Law Review at p. 477.

law schools, as we have already pointed out[24], have to keep first things first and to remember that, in the limited period during which they have the opportunity of moulding young minds, their object should be not to produce a short-term professional competence but to inculcate a scientific legal training which must serve as a basis for a whole lifetime in a profession calling for the most varied skills. The story is told of a respected American law teacher that the father of one of his graduates complained that when the son joined his law office he had to be shown how to draw a replevin bond. Upon being asked by the teacher how long that process had taken the father candidly answered that it had taken about five minutes. To which the teacher is reported to have replied " I thought so. You see, we are teaching our students things which you could not teach him in a lifetime".

The moral of this story is that while a young graduate's ignorance of many of the techniques and skills of practice can be cured by experience, he has already had in law school the opportunity of acquiring certain fundamentals which practical training alone cannot, or can only imperfectly, supply. Two hundred years ago Blackstone pointed out[25] the shortcomings of a purely practical training as an education for a lawyer : " a lawyer thus educated....will find he has begun at the wrong end. If practice be the whole he is taught practice must also be the whole he will ever know"[26]. That is why it is today considered to be sound educational theory that it is more important in law school for a lawyer's mind to be taught how to work rather than how to practice and that the legal education provided by law schools should not be exclusively utilitarian or vocational.

These, then, are the objectives of legal education as they have come to be understood today, but the question might be asked whether they apply both to university law schools and to the so-called " professional " law schools maintained by professional organisations which provide teaching for examinations admitting to the profession. It is sometimes urged—and this point of view is very prominent in Ceylon—that although university teaching of law must, like all university teaching, be scientific and therefore comprehensive, aiming at conveying an understanding of the fundamentals

24. See pp. 95—97 above.

25. " Commentaries on the Laws of England", (1757), Introduction, Section I " On the Study of the Law " (edited by R.M.Kerr, 4th edn. 1876, p. 17).

26. He continued : " If he be misinstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him ; *ita lex scripta est* is the utmost his knowledge will arrive at : he must never aspire to form, and seldom to comprehend, any arguments drawn a priori, from the spirit of the laws and the natural foundations of justice".

of law considered in all its varied aspects, yet the "professional" law schools must aim at "practical training" and must, therefore, teach the details of bread-and-butter subjects for purely practical purposes. But on careful examination this assumed difference between the "academic teaching" supposed to be provided by the university law school and the "practical training" its professional counterpart is said to give is found to be an illusion based on various fallacies concerning legal education to which practitioners too often subscribe.

In the first place, the university law schools are far from underestimating the necessity for their students to be trained in the techniques of law as a craft, especially in view of the fact that a university law degree is increasingly coming to be recognised in all countries as a qualification in whole or in part for admission to the profession[27]. But from experience law schools have come to realise that there is not very much they can do in this regard because of their inability to simulate quite realistically the conditions and problems of actual practice[28], and of course this difficulty confronts the professional law schools equally with the university ones. Hence, legal educators have been forced to the conclusion that the prime responsibility for training in many of the technical skills of practice must be left to other hands[28], and that they should concentrate in the short time at their disposal on other but equally important aspects of professional education—such as inculcating a scientific background of legal knowledge—which they can tackle better.

Secondly, as regards the subjects taught in law school itself, it is surely a mistake to suppose that university law schools handle the teaching only of subjects bearing on essential data or basic elements of the legal order which enable the student to become acquainted with general principles and ideas of lasting value, whilst by contrast professional law schools teach only those subjects which the student will need to know in his practice and that these are treated in the utmost detail[29]. In actual fact, of course, the curricula of most university law schools are closely correlated to the needs of the profession and indeed are often decided in collaboration with distinguished practising members of it—for if it were otherwise university

27. See n. 32 at p. 101 below.

28. See pp. 95—97 above.

29. To imagine this is to overlook the fact that the method of approach is more important than the subject studied. The most specialised subject can be expounded in such a manner as to emphasise what is of general intellectual interest, by distinguishing the rules containing principles from those relating to technical implementation or detail ; and on the other hand the most formative or general subject can be treated from such a narrow viewpoint that it does not help to promote a real appreciation of the underlying spirit of law.

law degrees would not have been able to win recognition as exempting wholly or partly from examinations admitting to the profession ; and, on the other hand, most professional law schools of any standing, those which are not merely " cram shops " for professional examinations, have realised the importance of including in their courses subjects of a general nature not immediately bearing on practice—for example, Legal History, Roman Law, and Jurisprudence. Thus, little difference, if any, can be drawn between university and professional law schools in respect of the subjects actually taught. Further, as regards the nature of the teaching, there is no reason at all why the scientific teaching of a legal subject should conflict with so-called practical teaching : the former, while maintaining the latter, can complete it by placing greater emphasis on training the mind than on the material extent of the knowledge imparted. In fact professional law schools, like their university counterparts, have begun to find this approach to their subjects the only solution to the problem created by the fact already mentioned[30] that there is nowadays no standard type of practice for which they can expect to prepare their students.

But quite apart from these considerations which make a purely vocational training impracticable even for the professional law schools, there is another important reason why such law schools also should set before themselves the broader objectives that university law schools have emphasised. In several countries distinguished lawyers have deplored the fact that the inveterate conservatism of their profession has resulted in its members taking little or no interest in reform of the law and its machinery. University law teachers have for long recognised that legal education must be considered defective if it does not aim at inculcating the idea of professional responsibility for the constant adaptation of law to its basic purpose of social welfare; and they have urged that in order to fulfil this purpose of sharpening the critical faculties of the lawyers of tomorrow they must " teach law as a great human institution serving social and economic ends", " as an instrument of social purpose and not merely as a mass of technical rules"[31]. Now it is true that the university law school has in most countries become the normal road by which the lawyer enters the profession[32]. But it is most important that even the professional law school should realise the

30. See pp. 96-97 above.

31. Professor E. C. S. Wade in 6 Cambridge L.J. at pp. 288-289. "A narrow training in nothing but the technique of legal work is unlikely to produce the right type of men. The widest possible outlook is wanted. Lawyers too must see their work in its social setting : they must learn to test their rules and practice by examining the function that they are fulfilling". R. M. Jackson, " The Machinery of Justice in England," 2nd Edition, 1953, p. 214. Compare Lo d Sankey quoted in n. 17 at p. 97 above.

32. Even where a university degree in law is not a required qualification (as it is in most Conti-

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importance to the profession of the practising lawyer knowing not only *how* to do something, but also the *why* and the *wherefore* behind the how ; and this is all the more important in a country like Ceylon where an university law degree is still a comparative rarity and the professional school is thus still the chief agency for teaching law. The stimulation of a critical sense and the inculcation of the idea of professional responsibility for the improvement of the law are no less important functions of a law school than the imparting of legal knowledge or training in practical skills, and the two former objectives cannot very well be fulfilled in a school with a narrow vocational conception of its duties.

In concluding this account of the objectives of legal education as they have come to be understood in progressive countries, I should like to make an appeal for a much closer interest by practising lawyers in Ceylon in the work of the teaching branch of the legal profession. In most countries practising lawyers extend a willing cooperation to their academic brethren because they have come to appreciate the importance of the functions that the latter fulfil in the development of the law. It would not be difficult to show how significant a part has been played in most countries by teachers of law in movements for legal reform, both by calling attention in lectures and writings to anomalies and defects in the law as well as by their work on commissions appointed to consider specific questions. Quite as important has been the work of teachers in scientifically expounding or restating various branches of the law. Today, even in the Anglo-American Common Law world where (unlike in the Civil Law countries of the Continent) the judge has traditionally occupied a pre-eminent position as declarer of the law, there is an increasing tendency on the part of judges and practitioners to rely on the writings of academic lawyers for systematic presentation of principles or elucidation of difficult points[33].

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nental countries and states of the U.S.A., for which see n. 7 at p. 93 above), most lawyers in fact learn their law in a university school ; and the professional bodies, which generally control admission to the profession but do not always offer teaching for the examinations which they conduct for such admission, tend to recognise the university degree as exempting wholly or partly from their examinations.

33. Mr. Justice Denning, in a review of the third edition of Professor Winfield's " Textbook on the Law of Tort", wrote in 1947 : " The reason why such books " (as Winfield on Tort) " are so useful in the Courts is that they are not digests of cases but repositories of principles. They are written by men who have studied the law as a science with more detachment than is possible to men engaged in busy practice. The influence of the academic lawyers is greater now than it has ever been, and is greater than they themselves realise. Their influence is largely through their writings. The notion that their works are not of authority except after the author's death has long been exploded. Indeed, the more recent the work, the more persuasive it is,.....because it considers and takes into account modern developments in case law and current literature....The vast tomes written and edited by practitioners for practitioners fulfil a different purpose. They are valuable as works of reference. They are cited not for principles but for detailed rules on special subjects. They are most important in day to day practice, but do not compare with books such as *Winfield*, when it comes to fundamental principles". (63 L.Q.R. at p. 516).

This division of labour was no doubt inevitable : for the practising lawyer, immersed in the day-to-day particulars of one of the most exacting of callings, is not in so favourable a position to take a detached view of wider horizons as the professional teacher who gives the greater portion of his working life to the advancement of legal science. But both equally are (in the language of the Roman jurist, Ulpian[34]) " *sacerdotes iuris, artis boni et aequi*", " priests of the law, of the art of what is good and fair", and must work in close collaboration if they are to be of service to each other and to their common mistress, the Law[35]. In Ceylon, however, what Sir Frederick Pollock said of his own country in 1883[36] is still very largely true : " the scientific and systematic study of law" is "a pursuit still followed in this land by few, scorned and depreciated by many". How else can an explanation be found for the fact tha , until the establishment of the Faculty of Law at the University of Ceylon nine years ago, there were no full-time teachers of law, and even today there are only four such teachers, in a country in which law students owing to the paucity of textbooks will readily endorse Maitland's dictum[37] that " taught law is tough law". This unsatisfactory state of things can only be remedied if the practising lawyer, who exercises an almost complete control over legal education in Ceylon, will endeavour to show a more sympathetic understanding of what the law teacher is trying to do and of the many ways in which the latter can help in developing and improving the law.

The experience of other countries has shown that legal education cannot fulfil its proper functions without the active interest and encouragement of the whole profession, and conversely that improvements in legal education are soon reflected in the betterment of the law and in the increased

34. in Justinian's " Digest", 1.1.1. pr. and 1.

35. " The scholar has more opportunity of thinking out principles at large and can examine rules of law to see how they accord with humanity or with social or economic or commercial utility. But the scholar must keep in close touch with the lawyers of practical experience and with the facts of life, just as the practical lawyer must seek to benefit by what help in his daily problems he can get from the labours of the scholar. The two must work hand in hand." (Lord Wright, " Legal Essays and Addresses", 1939, p. 349).

36. " Oxford Lectures and Other Discourses", 1890, p. 38. Pollock's own writings and example did a great deal to raise the status of legal studies and law teaching in England. " He has vindicated to this generation", said Lord Wright, " the vital importance of extra-judicial writing in law " (" Legal Essays and Addresses", p. 411). " He is a great modern instance of a life devoted to law as a matter of theory, not as a practical pursuit", " an outstanding illustration of how the study of law may have value and importance as a career and as the occupation of a highly gifted life " (op. cit. p. xxvii).

37. " English law and the Renaissance", 1901, p. 18. In making this remark Maitland himself probably meant to refer (as his remarks on p. 25 of the same work show) to the vitality given to a legal system which is the subject of systematic exposition and study. As Chief Justice Vanderbilt says, "Untaught law is withering law, decaying law " (" Men and Measures in the Law", 1949, p. 53).

awareness by the profession of its many responsibilities to the public[38]. " In the last analysis", says the Report of the Survey Board on Californian Legal Education[39], " legal education has two related objectives—the training of lawyers and the improvement of the law. The latter objective in particular requires not merely that poor law schools be eliminated but that the best law schools be made better". It is earnestly hoped that members of the legal profession in Ceylon will give her two law schools—the professional school which has existed for eighty-three years and the university school founded nine years ago—the encouragement and co-operation to which they are entitled from the profession. Only then can the law schools be expected to produce men and women qualified to carry on the highest traditions of a public and learned profession so essential to the welfare of the state[40].

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38. It is, perhaps, not irrelevant to call attention to the description of a profession as " a group of men pursuing a learned art as a common calling in the spirit of a public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose. Gaining a livelihood is incidental, whereas in a business or trade it is the entire purpose" Roscoe Pound, " The Lawyer from Antiquity to Modern Times", 1953, p. 5.

39. " Legal Education and Admissions to the Bar in California", Los Angeles, 1949, p. 139.

40. It is submitted that the time is ripe for a comprehensive Survey of the Legal Profession in Ceylon, such as that undertaken by the American and Canadian Bar Associations ; and even if that is not done, at least a Survey of Legal Education in Ceylon should be made by a Commission with representatives drawn from the Bar Council, the Law Society, the Judges of the Supreme Court and the teachers of the Faculty of Law of the University of Ceylon and of the Ceylon Law College. Apart from any other considerations, a Survey of the Legal Profession or of Legal Education in Ceylon is necessary to consider how the profession can face the problems arising from the policy, now enunciated in the Official Language Act of 1956, of replacing English by Sinhalese in all spheres of the country's administration.