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LEGAL EDUCATION AND DEVELOPMENT THE NEED FOR LEGAL TRAINING OF CIVIL SERVANTS: A CASE FOR DIPLOMA IN LEGAL STUDIES IN THE UNIVERSITY OF MALAYA

I

THE CHANGING ROLE OF CIVIL SERVANTS

Since independence in 1957, Malaysia has embarked upon various economic development programmes which have led to rapid economic, social, cultural, political and technological development in the country. So far, five five-year plans have been introduced, the First Five-Year Plan, 1956-1960, the Second Five-Year Plan, 1961-1965, the First Malaysia Plan, 1965-1970, the Second Malaysia Plan, 1971-1975 and the Third Malaysia Plan, 1976-1980, some with moderate success and some with great success.

Development is a dynamic process where things, ideas, knowledge and even institutions change. With these rapid changes, knowledge becomes obsolete in the course of time. With this it follows that what is learnt has to be relearnt to keep up with the times and also with the increased amount of knowledge and information available.

With the increase in development activities there is also a rise in the demand for government involvement. Problems and issues not only grow bigger but even more complex. The management of these problems and issues have to be done systematically and also within the framework of law. Through all these spectra of problems and activities, rules and regulations are formulated.

In response to development plans and to cater for the ever increasing need of providing better services to the public, there is corresponding expansion in the government's administrative machinery. The advancement in development also resulted in more complex problems confronting the civil servants in the process of carrying out their duties. More often than not, they are confronted with legal problems.

Since 1965, the government has expanded the civil service four-fold. The term 'civil service' here refers only to those in Division I of the Malaysian Administrative and Diplomatic Service. In 1975, the number of civil servants in this category totalled 1,841.

Today, most of them are not only entrusted with administrative functions but also with judicial functions as adjudicators, magistrates, or members of Tribunals. In addition, those civil servants who are posted to the Ministries play another role - that of advising the legal draftsman on policy matters when formulating new laws or amending the old ones.

Indirectly, they are the "law-makers" behind the scene. In view of the triple roles which are being increasingly entrusted upon civil servants, there is great need for the government to send these officers to attend law courses, in order to create a more efficient and dynamic administrative system of government. In the past, the civil servants were not sent for any formal training in law. Only in 1969, when the Diploma in Public Administration was introduced in the Faculty of Economics and Administration, University of Malaya, were such courses like Public Law, Land Law, and Local Government introduced for the first time to the civil servants to expose them to the machinery of government at national and district levels. In 1974, The National Institute of Public Administration (INTAN) introduced a comprehensive six-month basic training course for a group of 50 civil servants. The course is divided into 14 modules, ranging from personnel and financial management to law and political science.

II

LEGAL EDUCATION AND TRAINING

Training is a conscious process of imparting, acquiring and developing skills, values and knowledge. No matter what form it takes, it is primarily designed to improve and widen one's area of efficiency and dexterity or to reduce one's area of handicap or inadequacy.

"Legal training, refers to experiences and training which help different kinds of people to understand and use law in society. Our primary focus is upon university institutions which provide intensive, structured education in law, but we think a report on legal education addressed to development should adopt a much broader perspective of needs for legal education. A citizen, to be effective in the enjoyment of his civic capacities, needs a basic knowledge of at least some aspects of law. Officials and others who perform important law roles — e.g., as policemen, businessmen or politicians — need an understanding of parts of the law and its underlying policies and values. The proliferation and specialization of various new activities may call for particularized kinds of legal education."¹

Law is a discipline which is based largely on rational and logical reasoning. Like economics and other branches of the social sciences, law exposes the student to a particular form of reasoning that is orderly, consistent and compact.

Civil servants, in general, and, in particular, those serving in the Malaysian Administrative and Diplomatic Service, are by and large generalists by training, that is to say, they are mainly graduates from the arts, economics,

¹ (LC, Legal Education in a Changing World, p. 16.

humanities and social science faculties. Law graduates are either attracted to private practice or are absorbed into the legal and judicial service. In comparison, the tendency in the continental countries is to emphasise legal qualifications as part of the requirements for entrance into the civil service. In particular, the Federal Republic of Germany has long insisted on legal training as a traditional ingredient for those intending to serve the government. In Malaysia, whatever little knowledge about law and the legal process that civil servants may have is due mainly to the requirement that they have to sit for departmental examinations where law, as a subject, is made compulsory. It should be emphasised that this is not legal training as such but merely a requirement to fulfil service conditions.

The primary objective of legal training is to equip and familiarise civil servants with knowledge in law and the legal process so as to enhance their capabilities and calibre as dynamic agents of change. To a large extent, the role that civil servants are expected to play today has become more demanding than in the past.

Furthermore, legal training is to enable the civil servants to cope with the ever increasing legal complications of the administration of the country and to make them understand the consequences of their actions. Such understanding is vital to enable the civil servants to act with confidence, so long as they have the support of the law, and to avoid or minimise errors and mistakes in the course of performing their duties, as well as to suggest improvements on the existing laws and to formulate new ones when the occasions demand it. In general, when the civil servants are equipped with the necessary legal knowledge they can themselves take the lead and provide exemplary models of those who adhere and respect the rule of law relating to human rights and individual liberty.

The officers of the Malaysian Administrative and Diplomatic Service are transferable from one post to another – anything from Assistant Secretary in a Ministry to District Officer or Collector of Land Revenue in the district. With the mobility inherent in the service, it is becoming increasingly important for the civil servant to be flexible and able to adapt himself to the changing nature of his work. Training may be useful in developing a well-rounded personality that would enable a civil servant to cope with his new environment.

There was a time when knowledge was dangerously developing along specialised lines. It is now recognised, however, that there is a great deal of interdependence among disciplines. Thus, a doctor has to understand some sociology and an engineer may need some basic knowledge of economics. Likewise, an administrator needs to have, *inter alia*, some knowledge of law.

It must be emphasised, however, that the study of law is not an end in itself but a means to an end. The ultimate objective is to produce officers who can competently discharge their duties and bring about an efficient

administration that is so essential for the political, economic and social development of the country.

The study of law is therefore essential in making an officer aware that he should, at all times, work within the framework of the law. Law provides continuity in the social system and it is the duty of the administrator to preserve and maintain this continuity.

At the university or any other institution of higher learning, various forms of formal training may be given. A medical student is taught ways of handling and treating the sick while a law student would be specially trained to prepare him to be a lawyer. On the other hand, an administrator is normally trained in the liberal arts which do not normally provide specialised knowledge that could be directly applied to his work. Further training is therefore essential to provide an administrator with more specialised knowledge that would enhance his capability of performing his duties.

Whatever form it takes, training is essential to prepare and expose civil servants to the increasingly complex nature of administration. An understanding of the nature of his work, the scope of his responsibilities and the limitations to his powers are important ingredients in determining the ability of an officer to perform his duties competently and efficiently. In an evolving working environment, some ideas may be rejected as being no longer relevant and in its place would come more progressive ones. A civil servant must be aware of the changing working environment and through this he will understand the scope of his responsibilities.

III

COURSE CONTENT

The object of this Diploma Course is to give civil servants an insight into, and an understanding of, the basic legal concepts, and to make them familiar with the whole process of law making. As such they should be exposed to at least eight units of subjects, four of which should be made compulsory.

Constitutional and Administrative Law should be made a foundation course. It is the basic law of the land and understanding the various systems of government would be an added advantage to a civil servant.

Legal philosophy, in the nature of applied jurisprudence, should be introduced. It is an important subject for the civil servants to know as it provides the basis for understanding legal reasoning. Understanding the justification for introducing a piece of legislation would give them added conviction and provide them with more incentive to apply a particular legislation in accordance with the spirit of the law.

Islamic Jurisprudence should be introduced as a part of the whole course in Applied Jurisprudence. The objective is to provide a comparative approach to legal reasoning and to expose the students to both the com-

mon law system and the Islamic system. This is important because the officers will invariably be posted to the district where there is a likelihood that they will encounter various problems relating to Islamic law and Malay custom.

Malaysian Legal System and Legal Methods, a compulsory paper offered in the First Year LL.B. degree course, should be introduced in a simplified version in the Diploma Course. It is important as it introduces the Diploma Students to the study of law.

A course in Legislative Drafting would be an added advantage to the civil servants because they will invariably be posted to the Ministries and, more often than not, their roles would be that of Advisers to the Attorney-General's Chambers on matters of policy. After obtaining a clear understanding of the mechanism involved in law-making, the civil servants could appreciate the problems, implications and effects of a new law or an amended law before they are introduced.

The course on the Administration of Criminal Justice should be made compulsory so as to expose the civil servants to the finer points of law on how and why criminal justice is administered in a certain way. This course would demonstrate to them that justice must not only be done but must manifestly be seen to be done.

Some optional courses may be taken from the following list:

- i) Land Law
- ii) Public International Law
- iii) Islamic Law
- iv) Customary Law
- v) Criminal Law
- vi) Comparative Law

IV

TRAINING FACILITIES

Given an addition of three teaching staff to complement the existing staff of the Faculty of Law, the Diploma Course may be able to begin as early as the 1977/78 academic session. When the Faculty moves to the new building during the second term of the 1976/77 session, enough space will be made available for the Diploma Course. A Lecture Theatre Complex consisting of separate theatres will have enough space to cater for the programme.

Similarly, when the Law Library moves from the present Main Library, no additional floor space is required as the library is capable of seating 250 law students at any one time.

Text books, reports, journals, etc. presently used by the law students will be made available to the Diploma Students. No additional budget is necessary in this respect.

V

THE CANDIDATES

The Diploma in Public Administration Course presently conducted at the University of Malaya is being patronized by the Malaysian Government. Every year, a group of between 20 to 30 civil servants have been sent for training. It is submitted that since the course is tailored to the needs of the government, the course should only be open to those who are sponsored by the government. Initially, no private candidate will be taken in. However, as the course expands its wings, some places could be made available to private candidates.

As for the qualifications of the candidates, the present principle used in determining the candidacy for the course leading to the Diploma in Public Administration should be applied to that leading to the Diploma in Legal Studies. The criterion for the Dip. P.A. course is as follows:

- i) a Candidate must possess an Honours degree from a recognized university and must have at least 3 years experience; or
- ii) a candidate who has obtained a pass degree may be accepted if he has five years experience.

VI

CONCLUSION

The course in the proposed programme should be for one year on a full-time basis and the candidate who satisfies the Board of Examiners will be awarded the Diploma in Legal Studies (Dip. L.S.)

It is hoped that the University, the Public Services Department, the Attorney General's Chambers and the Ministry of Education would sort out the details of the programme as soon as possible, so that the course could start in the 1977/78 academic session.

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CASE - NOTES

POST-1956 ENGLISH DECISIONS.
ARE THEY BINDING IN MALAYSIA?

LEE KEE CHONG v. EMPAT NOMBOR EKOR (N.S.) SDN. BHD.

The recent Privy Council decision in *Lee Kee Chong v. Empat Nombor Ekor (N.S.) Sdn. Bhd.* [1976] 2 M.L.J. 93 provides an opportunity to consider how far English decisions are binding in Malaysia.

The relevant statutory provision is of course section 3 and 5 of the Civil Law Act, 1956 (Act 67). In this note we are concerned only with section 3. Section 3(1) of the Act reads as follows:—

“(1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia the Court shall

- (a) in West Malaysia or any part thereof, apply the Common Law of England and the rules of equity as administered in England on the 7th day of April 1956;
- (b) in Sabah, apply the Common Law of England and the rules of equity, together with statutes of general application as administered or in force in England on 1st day of December 1951;
- (c) in Sarawak, apply the Common Law of England and the rules of equity together with statutes of general application as administered or in force in England on the 12th day of December 1949, subject however to section 3(iii);

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary”.

There appears to be no doubt that pre-1956 decisions of the House of Lords in England are binding in Peninsular Malaysia in any case which turns on a point of common law or equity. Prof. Bartholomew in “The Commercial law of Malaysia” at p. 107 quotes the authority of the Privy Council decision in *Robins v National Trust Co.* [1927] A.C. 517 where Lord Dunedin said — “When an appellate court in a Colony which is regulated by English law differs from an appellate court in England, it is not right to assume that the Colonial court is wrong. It is otherwise if the authority in England is that of the House of Lords. That is the supreme tribunal to settle English law and that being settled, the Colonial court which is bound by English law, is bound to follow it.”