

THE LEGAL PROFESSION IN PAPUA NEW GUINEA*

BY S.D. ROSS**

In April 1977 the then Minister for Justice, N. Ebia Olewale, acting under Section 9 of the *Law Reform Commission Act, 1975*, requested the Law Reform Commission to investigate the Legal Profession and the Judiciary. This report covers one part of that reference - the Legal Profession. A report on the Judiciary was published in the last issue of the *Melanesian Law Journal*.

I. *The Terms of Reference of the Enquiry.*

The Minister's reference calls for an enquiry and report into the legal profession for the following reasons:

1. The structure of the legal profession in Papua New Guinea was established during the colonial times; and
2. Its services are not cheap or made readily available to the public in accordance with National Goal and Directive Principle No. 2 of the Constitution, which calls for equalisation of services in all parts of the country, and for every citizen to have equal access to legal process and all services, governmental and otherwise, that are required for fulfilment of his or her real needs and aspirations; and
3. The establishment of a legal system based on Papua New Guinean ways of doing justice requires a legal profession which is in line with these ways.

The Minister asked for an enquiry into:

1. The structure of the legal profession including ... their methods of training, payment, etiquette and conduct including the manner of their dress; and
2. The ways in which the legal profession ... meets or fails to meet the needs of our country and its people; and
3. The ways in which the legal profession ... should be changed so that it will meet the needs of our country.

* This report was prepared in the capacity of Consultant to the Law Reform Commission and while I was a Visiting Associate Professor at the Faculty of Law of the University of Papua New Guinea in 1977.

The opinions expressed in this article are those of the author, and do not necessarily represent the views of the Commission or the University.

** Senior Lecturer in Law, University of New South Wales.

The Minister suggested that in undertaking the review, the Law Reform Commission will -

1. Consult with any body of lawyers established in Papua New Guinea and such other bodies or people as you consider appropriate; and
2. Give particular attention to the localisation of the legal profession ...; and
3. Give particular attention to the ways in which legal services can be made cheaper and more readily available; and
4. Consider the establishment of a National Legal Corporation to serve semi-governmental institutions; and
5. Consider the establishment of para-legal lawyers; and
6. Consider the ways in which legal expertise can be developed among Papua New Guineans in particular areas, such as dealing with foreign investors.

This report is based on interviews and discussion with members of the Judiciary, the public and private profession, and the Law Faculty. It also includes information from interviews conducted by four of my students.¹

II. *A Profile of the Legal Profession.*

A. Localisation of the Profession.

As of August 1977 there were 136 lawyers admitted to practice in Papua New Guinea.² Of this total 93 were employed by government departments or public corporations, 34 were in private practice, 4 were on the Faculty of Law, 3 were magistrates and 2 worked for private corporations.³ The government lawyers mainly worked for various departments and commissions under the jurisdiction of the Minister for Justice, but 9 of them worked for other government departments or public corporations. These figures do not include 28 Papua New Guinean law graduates, who are not admitted to practice,

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1. The students, Mathias Ijape, Alois Jerewai, Tau Rei and Porami Tamutai, interviewed 12 private lawyers and 22 public lawyers. I interviewed 6 private lawyers (senior partners in the law firms) and 7 public lawyers (including heads of departments). This represented approximately 30% of the public lawyers and 50% of the private profession.
 2. Roll of Resident Barristers and Solicitors admitted to Practice at Papua New Guinea Bar, August 1977, (hereinafter "Roll").
 3. Ibid

and work mainly in non-legal government positions.⁴ The private profession is composed of 7 firms (one a branch of a Sydney firm) and 6 solo practitioners (one a branch of a Brisbane firm). The largest firm has 6 lawyers, 2 firms have 5 lawyers, 1 has 4 lawyers and 2 have 3 lawyers.⁵

The number of Papua New Guinean lawyers admitted to the profession has been increasing rapidly but full localisation of the profession is still not anticipated in the near future. The first Papua New Guinean lawyer was admitted in 1966, the second in 1969 and 6 in 1972.⁶ As of April 1976 there were 28 admitted⁷ and the most recent total in August 1977 was 43. Of that total 34 work in the public legal service, 7 in private practice (3 having a solo practice), 1 for a private corporation and 1 is a member of the Faculty of Law.⁸ The localisation of the legal profession will be a slow process. A 1974 Report projected that in 1977 the law graduates of the University of Papua New Guinea would fill 35% of the legal manpower needs.⁹ This has proved to be an overestimate as only 31% of lawyers presently in practice are Papua New Guineans¹⁰ and moreover the total number of lawyers is below manpower needs.¹¹ The Report also said that by 1980 the University would provide about 60% of the manpower required.¹² This seems unrealistic in light of very high failure and drop-out rate that presently exists in the Faculty of Law,¹³ the failure to meet present manpower needs and the number of law graduates that have found employment in non-law areas.

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4. D. Weisbrot and A. Paliwala, "Lawyers for the People: Reviewing Legal Services in an Independent Papua New Guinea", (1976) 4 *Melanesian L.J.* 184 at 189, fn.17.
 5. Roll, *op.cit.*
 6. R.V. Gyles, "Law and Lawyers 1972", (1975) 9 *New Guinea* No.4, p.33 at p.39.
 7. Roll of Resident Barristers and Solicitors, April 1976.
 8. Roll, *op.cit.*
 9. Report of the Sub-Committee on Manpower Planning, University of Papua New Guinea, February 1974, Tables 1-3.
 10. Roll, *op.cit.*
 11. Report of the Sub-Committee on Manpower Planning, *op.cit.*
 12. *Ibid.*
 13. The present graduating class in 1977 has only 9 out of the original 47 students. This is an unusually poor performance. but the 1978 class will only have approximately 25 graduates out of the original 58. Also a majority of the first year class in 1977 failed at least one of their three subjects. See also R.W. James, "Developments in Legal Education in the Faculty of Law, University of Papua New Guinea" (1975) 3 *Melanesian L.J.* 185 at p.192, which gives 3 tables that indicate the numbers of student intake per year and the number of graduates from 1967-1975.

The problem of manpower is highlighted by the fact that the public legal service has a number of vacancies that it can not fill. In more technical areas (such as taxation) expatriates on short-term contracts have been recruited. This is a temporary solution but may have to continue for a long time because some of these experts have no national lawyers working under them. Even when national lawyers are being trained by outside experts they often do not stay in the position long enough to learn the particular technical area. The main reason for the vacancies and the frequent changing of positions by national lawyers is that the public service legal salaries are extremely low. National lawyers therefore seek either quick promotions (which are quite often granted), or work in higher paying non-legal government jobs, or enter private practice. Another important reason is a lack of dedication or feeling of obligation towards their own country. There seems to be among many of the national lawyers an attitude that the furthering of their own careers (especially financially) is much more important than making sure that they learn the necessary skills to enable them to efficiently perform the government legal services. On the other hand, some of the national lawyers have complained that they are receiving inadequate supervision and training from the more experienced expatriate lawyers.

For those national lawyers that enter or have entered private practice the financial rewards are impressive. The three national lawyers practicing on their own are extremely busy and will soon want to hire other lawyers. They will be able to offer higher salaries than the public service as well as the promise of very substantial incomes on attaining partnership. Those national lawyers going to work for one of the expatriate law firms also have bright financial futures. One of the four lawyers in this position, after three years in private practice, already has a larger income than the Secretary for Law, the highest government legal position.

Although it costs approximately K10,000 to establish a private legal office,¹⁴ national lawyers will easily be able to receive loans - especially from the Development Bank. In addition, the high price of coffee has provided many Papua New Guineans, especially in the Highlands, with a substantial increase in their wealth. This will be another incentive for enterprising local lawyers to establish a private legal practice to provide planning and counselling and to litigate on behalf of these groups and individuals.¹⁵ The

14. Interviews with private practitioners.

15. Robin Luckham has shown that the capital surplus from cocoa earnings in Ghana was related to the number of lawyers - larger surplus more lawyers. See, R. Luckham, "The Market for Legal Services in Ghana", (1976) 8 *Review of Ghana Law* 7. Luckham states at p.9:

"The expansion of cocoa production by peasant farmers and the scramble for mining concessions in the interior had the sudden effect of commercialising land and stimulating a flood of litigation. At the same time the expansion of the economy placed larger surpluses in the hands of the merchants of the coast and of the chiefs of the interior, which they could use - among other things - to send their sons and their maternal nephews on the long sea voyage to the Inns of Court".

lawyers in the public legal service have already seen the advantages of being in private practice. Almost all of those interviewed expressed the desire to eventually enter private practice.¹⁶

The suggestion has been made that Papua New Guinea train a new class of legal workers with limited specialised training as "'link-persons' between the ordinary citizen, and the bureaucracy or the formal court system".¹⁷ These "para-legals" would be less expensive to train than lawyers and could serve to fill the gap that exists in providing access to legal services (especially in the rural areas) and in communicating legal knowledge. The para-legals could help to alleviate the present shortage in legal manpower.

Some members of the private profession are opposed to such a scheme, although they appear not to understand the role of para-legals as proposed for Papua New Guinea. One private lawyer stated that he felt that "we already have para-legals - the law graduates from the University". This view was formed because of the practical training that has to be given recent graduates by the private firms in order for them to perform efficiently in the modern legal sector. But this is not the role of para-legals. It also reflects the fact that the legal profession has vested interests in preventing the legal system from becoming deprofessionalised, (see below). It is suggested that para-legals can have a role to perform, but that it should be limited to the lower courts and the development of the underlying law - the common law mixed with the customary law.¹⁸ In fact they should not be contaminated by being taught too much of the complex modern law, because they must be able to communicate with the common person in the village. They need to bring the relevant Government law to the common person and at the same time bring the people's law to the Government.

B. Geographic Location of the Profession.

The private and public legal professions are predominantly located in Port Moresby. There are five private lawyers distributed between Lae, Rabaul, Mount Hagen and Kavieng. The Public Solicitor has offices in Lae, Rabaul and Mount Hagen with a total of six lawyers, and the State Solicitor has a lawyer in Rabaul. In addition, the public lawyers (State Prosecutors and Public Solicitors) travel on circuit with the National Court. Private lawyers rarely appear before the National Court when it is on circuit. This is because of the high cost to a client (which includes air fares, accommodation etc.).

16. Interviews by the law students.

17. For details on these proposals see, Weisbrot and Paliwala, *op.cit.*, at pp. 196-199.

18. See "Declaration and Development of Underlying Law", Law Reform Commission of Papua New Guinea, Working Paper No.4, September 1976.

This very uneven distribution of lawyers means that the vast majority of the population have virtually no access to legal services. The Public Solicitor does provide a limited amount of help,¹⁹ but most people outside Port Moresby have to solve their legal problems without the aid of a lawyer. (Whether this is detrimental or beneficial will be discussed below). I have suggested in my previous report on the Judiciary,²⁰ that the decentralisation of the National Court would result in distributing more lawyers to other parts of the country. But even this decision would only result in a small increase in the deployment of legal manpower outside the capital.

C. Age, Sex and Experience of the Lawyers .

The legal profession in Papua New Guinea is extremely young. The average age of the Papua New Guineans is approximately 25 and that of expatriate lawyers is 29.²¹ The profession is predominantly male - there are only seven female lawyers (one being local). This situation will not change in the foreseeable future. The profession will continue to be extremely young as there will be a continuous large influx (compared to those in the profession) from the Faculty of Law, and these new lawyers will be almost all male.²² Also the profession has been attracting from young lawyers overseas (predominantly Australians, some English and New Zealanders).

One serious problem that is evident from such a young legal profession is the lack of experience - both in Papua New Guineans and expatriates. Extremely young lawyers with limited legal experience are in positions as heads of legal departments. This can be beneficial at times because youthfulness brings with it the ability to be flexible. But it does mean that many of the lawyers are learning on the job and the level of legal expertise must suffer. It also means that recent graduates do not benefit from being taught practical skills by senior staff with knowledge and confidence about their job.

The young age of the public legal profession may also cause certain problems in the future. When opportunities for obtaining a good public legal position eventually disappear there may tend to be a legal civil service that has its senior positions occupied

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19. See Public Solicitor of Papua New Guinea, *First Annual Report*, 1975-1976 at p.4 on the use of Provincial and sub-Provincial Offices, Welfare Offices, Labour Department Offices and field staff of the Prime Minister's Department in making contact between the people and the Public Solicitor's office.
 20. See S.D. Ross "A Review of the Judiciary in Papua New Guinea" (1977) 5 *Melanesian L.J.* 5.
 21. This is the average age of those lawyers interviewed, but this figure would not substantially differ from the average age of all the lawyers.
 22. There are presently only 8 female students at the Faculty of Law. See also, R.W. James, *op.cit.*, at p.191 where it is stated that in 1976 there were 8 women out of 164 students (of whom 4 were Papua New Guineans).

by cautious and less skillful lawyers who seek security - the more ambitious and talented lawyers having been attracted by the substantial financial rewards of private practice. This pattern would tend to keep the younger, more dynamic and talented lawyers from being promoted, and push them into seeking careers in the private sector.

The inexperience of the national lawyers has also caused some problems for the private profession. All the expatriate firms expressed a desire to hire "hard working, competent and intelligent" national lawyers. The reason for this desire is obvious: national lawyers can be paid a much lower salary than expatriate lawyers²³ and they can help the firm achieve a better public image - providing services to local people by having reduced fees and showing the government that they are willing to localise. But the firms varied in their views as to the training that would be required. The main view was that it would take anywhere from 2-5 years to train a local person to understand the intricacies of their business. One firm felt that a national lawyer would never be able to competently handle complicated international business transactions and that in any event, their clients would not want their business handled by such lawyers. The reason given was that the "Melanesian way of life" was not conducive to withstanding the continuous pressure that exists when these transactions are taking place. But it should be noted that large Australian law firms will not allow anyone but a very experienced lawyer to handle these transactions. Another reason given by all firms for the long training period was the low level of written skills of the national lawyers. Most of the firms felt that national lawyers eventually made competent advocates, but poor solicitors.

The inability of many national lawyers to apply the necessary verbal and written skills to legal problems is a serious one, and is quite evident when one teaches at the Law Faculty. It is a problem that must be dealt with if Papua New Guinea wants to maintain the present complicated system of adjudication and its present Constitution. Lawyers that do not possess these skills will cause damage to the development of government policies for a "modern" economic sector and to the development of a "modern" legal system. (See below.) The lack of fluency in English is rooted early in the educational process and may be difficult to overcome. But it is suggested that the Faculty of Law adopt stricter entrance requirements. Also, a more extensive course should be adopted in legal drafting and students with major problems with English should be required to take remedial courses during their law course. This may not overcome the problem, but at least it will not be hidden from view and only talked about behind closed office doors.

23. Usually they are paid one-third to one-half of the salary of expatriate lawyers with similar experience. This is in line with the policy of the public service. Also there are other expenses involved in hiring an expatriate - e.g., transportation, air fares, housing.

D. The Private Legal Profession.

The practice of law in Papua New Guinea has been a fertile ground for young Australians who wanted to gain experience and accumulate capital. A young lawyer can become a senior partner in 3-5 years in Port Moresby, while it would take 7-10 years in a large firm in Sydney or Brisbane. The present group of lawyers in private practice are young (average age around 30) and there are now only two senior members of the profession. A number of these young lawyers will be leaving in the foreseeable future for family reasons and to establish themselves in Australia. Some hope to continue to have an interest in their firm in Port Moresby, either by having a new firm established in Australia - having the Port Moresby firm as a branch office - or by doing consultant and/or advocacy work for that firm or other firms after returning to Australia. The latter is presently the case with several lawyers that used to practice here, but the prevailing view is that this only lasts until these lawyers get fully established in Australia. When that occurs they are too busy to do this work.

The private profession, being 80% expatriate and mainly representing the expatriate business community, has kept a low profile. Until Independence there did exist an unincorporated Law Society; but in the last three years it has become virtually defunct and has not met. Most of the firms feel that it is not their role to establish a Law Society, that the initiative should come from the national lawyers. A move is presently under way by the national lawyers to set-up a statutory Law Society (see below). In the meantime the private profession has informal *ad hoc* meetings of the principals of the major firms whenever mutual problems have to be solved. Since the community is so small these problems are usually solved promptly. This can provide "for efficiency in conducting the legal affairs of its clients because each member can depend on the co-operation of other members."²⁴ But having a small legal community can present certain disadvantages to the public:

"The profession can become too much of a closed society. It can keep the misdeeds of its members from being made public and protect those members so as not to bring the profession into disrepute."²⁵

Until recently there was no procedure for bringing complaints against lawyers except by the Court and there has never been a lawyer disciplined in Papua New Guinea. This situation has recently changed as the Acting Secretary of Law with the approval of the Chief Justice has established a Council of Legal Education. This Council was provided for under the *Legal Practitioners Act* 1954,²⁶ but was not set up until now. It is composed of three members, the Secretary of Law and two members appointed by the Chief Justice.²⁷ It has the power

24. S.D. Ross, "The Legal Profession in Tasmania", (1976) 5 *U. of Tasmania L.R.* 1 at p.14.

25. *Ibid.*

26. Section 6.

27. *Ibid.* The two senior members of the private profession were appointed.

to hold hearings in relation to complaints made against lawyers, to impose fines if they do not appear at the hearing, and to apply to Court after conducting an inquiry to have a lawyer removed from the Roll.²⁸ So far there have been only a few complaints concerning delay, and no hearings.

There is also legislation covering Trust Accounts that requires private lawyers to have their Trust Account audited each year and to make a report to the Secretary of Law.²⁹ Due to a lack of manpower, none of these reports have been investigated, nor have there been *ad hoc* checks made on the lawyers' trust accounts.

The expatriate private lawyers have a vested interest in seeing that national lawyers become part of their profession. They believe this would enable the private profession to become entrenched and act as a barrier to government interference (protect the rights of individuals and keep the profession from being nationalised). One firm has suggested that it is willing to give financial support, by way of loans and grants, to help national lawyers set themselves up in practice. Some of the firms have programmes for the financial support of local law students, some of whom work for them during the holidays. Others have expressed the willingness to send promising national lawyers to Australia to obtain the experience of working in an Australian law office. One firm suggested that the government should set up a programme that would financially support lawyers who want to practice in other parts of the country. They felt this would provide greater access for the people to legal manpower and also provide the law firms in Port Moresby with legal agents in other parts of the country. This would allow the Port Moresby firms to conduct their clients' business more efficiently (i.e., have the legal agent appear for their client on circuit or in the Local or District Courts).

Although there is great interest in hiring local lawyers there are still certain reservations. Almost all the firms were worried about the possibility of negligence actions if they gave too much responsibility to their national staff and if they did not properly supervise them.³⁰ Some of the firms felt that certain of their European clients would not want to be advised by national lawyers. But on the other hand, there was also a strong tendency to have national lawyers take care of any local clients that sought legal help. Since national lawyers receive a low salary the firms are able to maintain a fairly flexible fee system, charging the client according to his or her means.

28. *Legal Practitioners Act* 1954, section 11.

29. *Trust Accounts Act* 1961.

30. There are no reported cases of negligence actions against lawyers, but I was informed that several actions had been settled out of court.

Finally, there was a strong feeling among the private lawyers that they worked much harder than the public lawyers and that the level of legal competence in the public sphere was very low. It is also felt that the expatriate public lawyers are paid too high salaries in light of their limited prior legal experience. But many members of the private profession with limited legal experience were also getting substantial incomes. It did appear that the private profession was extremely busy and that there was enough business for more lawyers if they wished to enter private practice.

E. The Public Legal Profession.

The public legal profession is under the jurisdiction of the Minister for Justice. The highest officer is the Secretary for Justice who is in charge of all departments, but under the Constitution both the Public Prosecutor and the Public Solicitor can usually act independently in relation to their own departments.³¹ There are certain exceptions. The Prime Minister acting with the National Executive Council can give a "direction to the Public Prosecutor on any matter that might prejudice the security, defence or international relations of Papua New Guinea"³² The Public Solicitor is required to provide legal assistance to an indigent person who has been charged with an offence punishable by imprisonment for more than two years and to any person required to have assistance as directed by the Supreme Court or the National Court.³³ The third main branch of the public legal profession is the State Solicitor's office. The Secretary for Justice has direct control over the activities of this branch. There are also three Assistant Secretaries for Justice - Policy, Planning and Executive; Constitutional and Provincial; and International - all under the control of the Secretary for Justice. There are other organisations for which the Secretary of Justice has some degree of responsibility. They include the Law Reform Commission, Land Titles Commission, Land Court Secretariat, Village Courts Secretariat, Legal Training Institute, Registrar-General, Public Curator, Registrar of the National Court, Liquor Licensing Commission and Correctional Services.

As can be seen from the range of the different organisations, the public legal profession can do all the legal work that the Government requires. It also provides a valuable public service through the Public Solicitor's Office. (See below). But at present some government departments and almost all the public corporations have sought legal advice from the private profession. This has been done despite a Cabinet decision that any legal problems of the government and the public corporations should be handled by government lawyers. The reason given for seeking private legal services differ. The private lawyers emphasise that their advice is sought because they are more efficient and give special attention to their individual clients. They also argue that they can offer their clients stability - that the client will be able to have the same lawyer working on the problems. Finally, the client is able to sue them for negligence.

31. Section 176 of the Constitution.

32. Section 176 (3)(b).

33. Section 177.

The public lawyers accept the argument of lack of continuity. This is because there is a large turn-over of staff, especially with movement of lawyers to different positions within the same department. But they argue that they are not inefficient but rather short of staff, especially of staff with expertise in certain areas of the law. They also argue that they would do a better job than the private lawyers because they would better protect the Government's and the public corporations' interests against private enterprise. Finally, they point out that they *can* be sued for negligence; however, this does not take into consideration the political problems of initiating such an action.

No matter what the reasons are the result is that the Government has to pay for private legal work, while still paying salaries to a large legal public service. It would be essential to determine how much money the Government is paying the private firms and how much it would cost them to have the work done by government legal experts in order to decide who should do the legal work.

The question of the efficiency of the public legal service is not a simple one. There are obvious cases of public lawyers not doing their work, but on the other side there are cases of dedicated legal public servants who not only work hard during office hours but regularly take work home. If a lawyer is lazy and/or inefficient a competent superior officer should be able to have him or her removed from a job. One problem is that the expatriate staff are on short-term contract (usually 2 years) and therefore will usually be allowed to finish the contract. There is also a reluctance to fire local staff because of the desire to localise the government legal service. But it is still important to have hard-working, competent and experienced senior legal officers to supervise³⁴ and to set the proper atmosphere for the office. But it has been difficult to attract experienced senior officers. These requirements at times come into conflict with the desire to localise, but the appointment of a poorly trained national lawyer should be avoided. The public legal service has now reached a point in its development to be able to look at its efficiency and hire the properly trained person for particular jobs, and this may mean that for certain positions, overseas experts with high salaries and not nationals will be needed. These need not be Australians but can come from anywhere in the Commonwealth or from other countries. In fact, in certain delicate areas, especially in its relationship with Australia, it would be better to combine the skills of nationals and non-Australian experts. Some of the Australian legal experts in the past have had a tendency to favour their own country to the detriment of Papua New Guinea.

The salaries of national lawyers working in the public service are a matter of serious concern since it is directly related to the need for the public sector to recruit and retain highly competent legal talent. Qualified law graduates are paid the same as other public servants with no consideration given to the fact that they have

34. The Public Prosecutor had to close one of its branch offices because of lack of work by the lawyers and the inability to supervise them from Port Moresby.

special professional skills. This policy means that lawyers who commence their careers in the Ministry of Justice generally start at a lower salary level than lawyers who start with a position in another government department. It has also resulted in the anomaly of former law students who did not graduate being appointed to a higher level in non-legal government departments than the law graduates who are appointed in the Ministry of Justice. One of the aims of establishing a statutory Law Society is to organise those with legal qualifications to lobby for better financial conditions for the national lawyers.

A second problem in this area is that the national lawyers receive approximately one-third the salary of the expatriate Australian lawyers in the public service.³⁵ Although this is a valid government policy reflecting the wealth of the country, it causes resentment. The local lawyers see that they are doing essentially the same work and receive a much smaller remuneration for it. Also the national lawyers, unlike the expatriate lawyers, have financial commitments to an extensive family besides trying to maintain a life-style reflecting their position in the modern economy. Although the Government is trying to mitigate economic and social inequality among its people by keeping public servant salaries at this level, it will eventually have detrimental effects unless there is instilled in the public servants a feeling of dedication to the country. It is already affecting the *esprit de corps* of the public legal service and will eventually lead to lower quality of entrants into the service and an exodus of talented people to the private profession. As long as Papua New Guinea maintains a capitalist system and a private legal profession with it, there will be inequalities and trained legal manpower will be able to command higher rates of payment for skills than other sections of the community. This can be a dangerous situation for "a society which will be increasingly dependent on the quality and initiative of its public service".³⁶

These salaries do not have to be drastically changed if the Government changes its present political and economic policies. If it wishes to have a dedicated public service, the Government has to inculcate the students in the schools and universities with ideals so as to give them the motivation to serve the country. This means that it must develop a coherent political philosophy that is practised and taught in the schools and the villages. It means that Government officials and public servants must themselves show the people and the students by their actions that they are carrying out these policies. Other third world countries have done this and have avoided the need for large financial incentives for their public servants.

Finally, as was stated earlier, most of the present public lawyers wish to eventually enter private practice. The main reason given was for better financial conditions, but a secondary reason was that the work would be more challenging. There obviously must be some restructuring of the present public legal service in order to

35. There are four levels of expatriate salaries, with Australian being the highest, followed by: New Zealand, British and Filipino (the latter includes other countries such as India etc.) Salaries for national lawyers range from K3,340 to K9,250.

36. N. Kalder, "The Expenditure Tax in a System of Personal Taxation" in R.M. Bird and O. Oldman, eds., *Readings on Taxation in Developing Countries*, p.255.

provide the challenging work that is sought by its members. But although the public lawyers saw the advantages of private practice, some said that the level of legal competence on a whole among the private practitioners was not too high and felt they could do the work. There was also a belief that the private lawyers were earning excessively large incomes.³⁷

III. *Public vs. Private Legal Profession*

A. Introduction.

Papua New Guinea is at a cross-road in the development of its legal profession. Unlike the Western countries which originally allowed a legal profession to emerge more or less according to needs of the market-place, Papua New Guinea can determine the type of legal profession it wishes to have. The role of the State in fashioning and controlling the legal profession in Less Developed Countries is quite different than that of the Western developed countries. The local professions in many of those countries were virtually non-existent at the time of independence. Therefore, these states had and still have the chance to decide what kind of lawyers are needed and how they should be trained. The Government of Papua New Guinea will have to decide whether to allow a private legal profession to develop according to the needs of the market-place, whether to put certain restrictions on the private profession, or whether to nationalise it. The Government will also have to decide whether to strengthen the public legal profession, what kind of public lawyers it wishes to have, and the independence that will be given to its operations.

B. Nationalisation of the Legal Profession.

Although it is rarely considered in these terms, it can be said that "the entire legal system is the single best example of a nationalised industry in capitalist states".³⁸ Almost all the institutions that are involved in the business of law are paid for by the state - the courts, the prisons, the police, the legislative and executive branches, and the public lawyers.³⁹ The only group in the law business in Papua New Guinea (and elsewhere) that is not nationalised is the private legal profession. This group is very small and presently possesses far less political power than the long established professions of developed Western countries. In fact the Government may gain a certain amount of political benefit by nationalising a group that is predominantly composed of expatriates who are citizens of the country that was the former colonial ruler. It could do this at minimum cost because non-citizens do not necessarily have to be compensated for the taking of their property.⁴⁰

37. I was unable to obtain from the private firms any accurate details of the incomes of the partners. I did receive some information on the salaried local and expatriate staff.

38. R. Abel, "Lawyers and Justice: Limits on the Social Effects of Redistributing Lawyers' Services", unpublished notes for an essay, April 1977.

39. *Ibid.*

40. Section 53(7) of the Constitution.

It may cause some problems in the country's relationship with Australia, however. In 1977 Australia provided Papua New Guinea with \$224 million⁴¹ and "it is possible that less would be given to a socialist economy by an Australian government committed to private enterprise".⁴² But Australia's stake in the future of Papua New Guinea is not really based on economic philosophy. It would rather "supply aid to a stable socialist neighbour ... than to a discontented and critical capitalist one".⁴³ Moreover the nationalisation of the legal profession is not an infringement of one of Australia's major interests in the country. Nor would it mean Papua New Guinea had become a socialist country - in fact it could be easily accepted as an internal matter.

But would it be in the best interest of the country to nationalise the legal profession? Assuming it is nationalised what kind of public legal service should be established in its place? Can it be done while maintaining a free market economy? As an alternative, what restrictions can be placed on private lawyers if the private profession is to be maintained? The private expatriate lawyers do have some fear of being deported from the country and their firms being confiscated. This has happened in some other Less Developed Countries.⁴⁴ They have made substantial capital investments and would also lose the valuable asset of good will. Many hope to leave eventually and sell their interest in their firm to a national lawyer. They therefore have taken a low profile and have avoided getting involved in "political issues". (See below on civil liberties and the private profession). Some have taken the attitude that they will not worry about such an event as there is nothing they can do about it. The prevailing view was that the Government would be unwise to nationalise the private lawyers because they were providing an essential service to the country that could not be replaced.

Before Independence in 1975, most of the business law work was done by law firms in Australia and other countries. Some of the firms emphasised the fact that a certain amount of this work is now being done in Port Moresby. Certain large multinational companies and businesses still have the basic legal work done by law firms in the home country (United States, United Kingdom, Japan and Australia), but some rely on a Port Moresby firm to handle every day problems and some of the less intricate legal problems. In all likelihood if these firms were nationalised the legal problems would be dealt with in the home country. The cost of these legal services would still be included in the expenses of the companies operating in the country, so Papua New Guinea would save little on the cost of legal services. The country would save the

41. Papua New Guinea *Post-Courier*, August 18, 1977 at p.1.

42. J. Langmore, "Niugini: Capitalist or Socialist?", (1970) 4 *J. of the Papua and New Guinea Society* 63 at p.67.

43. Desagells, "Nationalisation and Niugini: Possibilities and Problems", (1971) 5 *J. of the Papua and New Guinea Society* 93 at p.106.

44. Uganda deported most of its private lawyers (some of whom were citizens) on the basis of race, but did not nationalise the legal profession. Tanzania, by its nationalisation programme, caused many private lawyers (mainly Asian) to leave the private profession. Some of these lawyers entered the public legal service, and others chose to leave the country.

fees now being paid to private firms for legal advice given to public corporations and government departments, but this could be a costly saving if the necessary legal expertise were not available. The best national legal talent would have to stay in the public legal service if there did not exist a private legal profession, but they might not have the required expertise; therefore expensive overseas experts would still have to be hired.

Another problem with the nationalisation of private practice is whether or not this action would prevent foreign corporations from investing in the country. This was the view of the private profession and of several of the public lawyers. The Papua New Guinean Government has decided to try and achieve development⁴⁵ by attracting the investment of foreign companies and the use of their technical services and knowledge. It is true that some companies may not want to invest in a country that does not have legal manpower in the form they are accustomed to using to serve its needs. But most companies look for an orderly tax structure and an orderly legal system.⁴⁵ This could be provided by a country that has a nationalised legal profession.

Another important argument for maintaining the private legal profession is that a "strong and independent" private profession is the best defence against arbitrary government, that private lawyers are the main bulwark in protecting the citizens civil liberties. Papua New Guinea has emphasised in its Constitution that it wants to guarantee certain basic rights and freedoms for all its citizens.⁴⁶ The present legal profession has shown little interest in opposing the Government to protect civil liberties of the citizens. Since they are non-citizens they fear possible retaliation from the Government. Several of the private practitioners agreed that they would avoid any serious confrontation with the Government. At the present time the main source of legal assistance in this area is the Public Solicitor's office which is a part of the public legal service, but which under the Constitution is largely independent. Some of the present private practitioners felt that this work could be done better by private national lawyers. They argued that if the private legal profession was expanded by a large influx of national lawyers, these lawyers would be in the position to defend the rights of citizens without worrying about deportation and confiscation orders.

On the surface this argument appears to be valid. However, an entrenched national private legal profession could become an important part of the political elite. The extent of its independence would depend "on its administering the legal process in a fashion consistent with the needs of the dominant political and economic interest".⁴⁷ If it opposes these interests by protecting the rights of parties in opposition to the

45. Bird and Oldman, *op.cit.*, at p.503.

46. See Part III of the Constitution - Basic Principles of Government.

47. D.O. Lynch "The Columbian Legal Profession: A Study of the Employment Market for Urban Lawyers and Their Functions in a Changing Society", a paper given at the Conference on Legal Professions, sponsored by the International Legal Center, October 25-28, 1976. The papers from this Conference are being edited by Robin Luckham and will be published in late 1978.

dominant group or groups it will soon find itself without political power and become mainly a group of technical specialists. This has some application in both developed and less developed countries, but even more so in the latter where the number of elites and elite groups are much smaller. Usually the dominant group or groups are not opposed by the vast majority of the private legal profession because the lawyers fear the loss of their very high economic status. Those few lawyers who are in opposition find themselves ostracised by the profession and persecuted by the Government. Some of these lawyers end up by practising revolution and not law. This has occurred in a number of South American and African countries⁴⁸ and most recently in India during the emergency proclaimed by Mrs. Gandhi.⁴⁹ The lesson to be learned from these recent events is that in Less Developed Countries, with poorly entrenched democratic institutions, governments will not be stopped from abuses of power in pursuit of their political objectives by the existence of private legal professions. In all likelihood a localised private legal profession in Papua New Guinea would not be able to act as the guardian of civil liberties. Civil liberties in the Third World can only be guaranteed by a benevolent state.

If the private legal profession is nationalised what kind of public legal service should be established in Papua New Guinea? There already exists a much larger public legal service than the private legal profession. It does almost all the forms of legal work that are required by the Government. On certain occasions, such as negotiating or renegotiating important investment contracts, the Government has employed overseas experts. In addition, it sometimes refers problems for expert opinions to Australian barristers and seeks advice from the private profession in Port Moresby. Also the independent public corporations have made substantial use of the local private law firms.

Without the private lawyers, the Government would continue to use overseas experts for certain complicated legal work. It must be recognised that for the foreseeable future this policy will have to continue.

48. The number of countries involved would include almost all of the less developed world, but the most striking examples are Uganda, Kenya, Nigeria, Brazil, Argentina and Chile. For examples in Less Developed Countries, see Y.P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya*, (1970), chapter X; S.D. Ross "A Comparative Study of the Legal Profession in East Africa", (1973) 17 *J. of African Law* 279; in a developed country see J.S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America*, (1976).

49. See R.L. Lidder, "Law and Order or Law and Freedom: India's Unfinished Struggle to Decide", an unpublished paper given at the East-West Center, Honolulu, Hawaii at a seminar on Problems of Law and Society in Asia, July 25 - August 12, 1977.

It may be worthwhile, for example, to employ at very high salaries certain tax experts - accountants and lawyers. By plugging up tax loopholes and by having a thorough examination of the books of all companies doing business in Papua New Guinea, those experts could in the long run help the Government to save an enormous amount of money.

In order to make efficient use of manpower, national lawyers should be required to remain in the position to which they are appointed for at least two years in order to learn the necessary skills. This requirement would be part of a bonding programme for all law graduates. Since the Government is paying for their education, all students (not only in law) should either be bonded or made to pay for their education.⁵⁰ This, however, needs to be accompanied by a Government programme to instill in the students a feeling of dedication to the country. If this is not accomplished any bonding programme will only cause resentment.

The Public Solicitor, with its branches outside the capital in Rabaul, Mount Hagen and Lae, is by far the main source of legal assistance and representation for the people of Papua New Guinea.⁵¹ This Office was

"established primarily to provide legal representation for indigenous and impecunious persons, as well as giving legal advice as required, but the office was not intended to expand to the detriment of the growth of the private legal profession".⁵²

This was the view of the Australian Minister for Territories in 1962 and is the view still held by the present Public Solicitor and his recent predecessor.⁵³ Both of these gentlemen believed that a private legal profession is necessary to Papua New Guinea. The Constitutional Planning Committee looked at the position of the Office of the Public Solicitor from a different perspective:

We do not consider that private practitioners will be able to provide legal services on the scale and the nature required by our people in the future, nor do we think they can be expected to do so. We are convinced that the Office of the Public Solicitor is the best institution to provide legal assistance to the great majority of our people.⁵⁴

50. See Papua New Guinea *Post-Courier* July 28, 1977 at p.1; also see J. Kaputin, "The Law - A Colonial Fraud", (1975) 10 *New Guinea* 4 at p.7.

51. R. Gyles, *op.cit.*, at p.34.

52. Public Solicitor of Papua New Guinea, *First Annual Report, op.cit.*, at p.1.

53. *Ibid*, and an interview with present Public Solicitor.

54. *Final Report of the Constitutional Planning Committee, Part 1* (1974), 8/11 para.108.

This Committee assumed that the private profession would continue to exist. If it were to have been nationalised they might have had other suggestions. For example, although the independence of the Public Solicitor's is guaranteed by the Constitution,⁵⁵ it still has its funds allocated by Parliament.⁵⁶ If the Public Solicitor should become too much of a threat to Government there would be strong pressure to limit the amount of these funds. The Committee may have recommended a different method of funding the Public Solicitor's Office, or having it established as an independent statutory corporation.

An alternative to the present structure of the public legal service is to establish a Legal Services Corporation. This Corporation could even be established while retaining the private profession, as was done in Tanzania. Tanzania, like Papua New Guinea but to a far larger extent, has established parastatal organisations to run the government's business enterprises. For several years after the *Nationalisation of Companies and Estates Act*, of 1967,⁵⁷ the Tanzanian Government continued to employ private lawyers, at high fees, to do the work of the parastatal organisations. It was decided that by using these private lawyers the government was going against its own political philosophy. Moreover, it was felt that the use of private lawyers was not the most efficient method of handling the legal problems of a socialist government's enterprises. Thus, in 1970, an Order was issued that established the Tanzanian Legal Corporation. The functions of the Corporation are:⁵⁸

1. (a) to provide legal services to parastatal organisations on such terms and conditions as may be agreed upon between the Corporation and the parastatal organisations;
- (b) to provide such legal services to the Government as the Attorney-General may direct;
- (c) to do any act or thing which in the opinion of the Board of Directors of the Corporation established by the Order, section 5 is calculated to facilitate the proper performance of its functions.

Sub-section (c) was amended in 1972 to allow the Corporation to provide legal services to the public.⁵⁹ The Order also states that:⁶⁰

55. Sections 176(5).

56. As is the case with the Public Prosecutor's Office, the State Solicitor's Office, the Law Reform Commission and other similar statutory bodies, the Public Solicitor's Office receives its funds out of the vote accorded to the Department of Justice by the Parliament.

57. In 1971 further important nationalisations were made under the *Acquisition of Buildings Act*.

58. *Tanzania Legal Corporation (Establishment) Order 1970*, Section 4.

59. *Ibid.*, as amended, 1972.

60. *Ibid.*

2. The Corporation shall perform its functions in accordance with the best professions standards.
3. The Corporation shall be entitled to charge any parastatal organisation to which it renders any legal service such fee as may be prescribed by any written law or, where no fee is prescribed for any such service, such fee as may be agreed upon between the parties or as may be determined by the Attorney-General to be a reasonable fee.

The Corporation is divided into three departments - Conveyancing, Litigation and Main Office (commercial and advisory work). It is a self-supporting organisation - receiving all the funds it requires to operate from the fees it charges. The parastatal organisations pay an annual retainer fee based on the type of business, its size and its annual turnover. The public (unless they are eligible for legal aid) are charged according to the fee schedule of the private practitioners.⁶¹

The lawyers in the Corporation are paid a salary similar to other public servants. An alternative to this system would be to have the Corporation operate like the Collective (Boards) of Advocates in the German Democratic Republic. In these Collectives the lawyers receive, pro rata, a percentage of the fees received in addition to their basic salary.⁶²

There are certain benefits to be gained from having a Legal Corporation. The lawyers are working for the benefit of the people of the country. They do not earn enormous fees for the services they render. Therefore there is a more equitable distribution of money earned from the provision of legal services. Finally, there is a more efficient use of legal manpower because the lawyers working for the Corporation become experts in specific areas of the law and fewer lawyers are needed to do the work formerly done by the private profession.⁶³ The arguments against a Legal Corporation are that it would create a new and unnecessary bureaucracy, concentrate power where it is better left diffused, and tend towards centralism when devolution of choice to local bodies is desired.⁶⁴ The Papua New Guinea Government will have to balance these arguments in light of accurate information on the present income of the private profession, the availability of skilled national lawyers and the cost of hiring legal experts.

In Papua New Guinea, the Public Solicitor provides the services to the public that are given by the Legal Corporation in Tanzania. It also has the right to charge clients who are able to contribute to the cost of its services.⁶⁵ Since the role of the Public Solicitor is

61. "The Tanzania Legal Corporation", *Commonwealth Law Bulletin*, No.2, Jan. 1975, p.58 at p.61.

62. *Ibid*, the article refers to K.H. Beyer, "Outline of Fundamental Questions of Socialist Law" (Mimeo), University of Dar es Salaam (1972) pp.185-186.

63. S.D. Ross, "A Comparative Study of the Legal Profession in East Africa", *op. cit.*

64. *Administration for Development*, No. 8 Jan. 1977.

65. *Public Solicitor (Charges) Act 1976*, section 2(1).

well established in this country it would be better to retain it. It could become part of a Legal Corporation, acting as a separate department. This may have certain advantages over the present position of the Public Solicitor if it is able to obtain a larger measure of financial independence than at present. However, it was stated by members of the office that they did not want the status of an independent statutory corporation because they felt that this would result in a lower budget.⁶⁶ This has not happened in the United States where the Legal Services Corporation's budget has almost tripled in the period of two years since its establishment.⁶⁷ Of course, any statutory corporation that relies on government funds can have its independence stifled. Therefore the Tanzanian and German Democratic Republic solutions which generate their own funds have merit and should be thoroughly examined. However, Papua New Guinea is not Tanzania. It is not a socialist republic and the number of government enterprises is comparatively small. It will have to be decided whether the establishment of a Legal Service Corporation would be financially viable. There may not be enough work to enable a Corporation to be self-supporting and it would therefore entail Government support. This will have to be balanced against the cost of getting expert legal advice from overseas or from the local law firms (if the profession is not nationalised).

One of the main obstacles to nationalising the private lawyers is the nature of the economic and political system. Papua New Guinea has a mixed capitalist system that depends on a free market exchange. As one author has stated:

This form of economic organisation has specific implications for the delivery of legal services. If market exchange is to operate as a method of allocating productive resources rules of the game are needed; normally in the form of contract law. Private economic actors require some means of being assured that the wealth they accumulate will not be appropriated by the state or other private parties.

One way to satisfy part of these needs is through the institutionalisation of a relatively autonomous legal order. The concept of autonomy is regarded as 'relative' because the degree of independence the profession enjoys is problematical. While universal rules administered and applied by neutral specialists may fulfill important functions in a mixed capitalist system, there is no reason to assume they are a necessary element. An adjudicative process tightly controlled by the state could meet many of the same needs in the sense of being predictable as long as the major economic groups dominate the state and the powerful groups and the state are mutually dependent ...⁶⁸

66. Interviews.

67. Discussions with Clinton Bamberger, Jr., Vice-President of the Legal Services Corporation.

68. Lynch, *op.cit.*

Although the private legal profession may not be a "necessary element" in servicing a mixed capitalist system, it will usually flourish in such an environment. If a government allows numerous private citizens to accumulate wealth there is an implication that it will permit or support independent professional groups. Also a frontal attack on the private legal profession will not be successful without a fundamental alternative to the class structure and to the mode of economic production.⁶⁹ It would mean that Papua New Guinea would need to a larger degree to have control over its economic and political links to international capitalism. It would also mean that the politicians would need to modify their present style of governing - particularly the ostentatious display of wealth that presently goes with high government positions. Such changes do not appear to be contemplated amongst the political elite in Papua New Guinea.

Another problem in relation to abolishing the private profession is the 'Big-Man'. The 'Big-Man' who accumulates wealth is an important figure in many traditional Melanesian societies. He seeks influence and wants to maintain his status.⁷⁰ Many of the young Papua New Guinea lawyers wish to become 'Big-Men' in the modern context. They will be a strong group for maintaining and expanding the private legal profession.

If the Government decides that it is in the best interests of the country not to nationalise the private legal profession, it may want to still have a larger measure of control over the profession. It would want to maintain an efficient and experienced public legal service and to achieve this could have all national law graduates spend five years in the public legal service (unless they pay for their own education). This will reduce the flow of recent graduates into the private profession.

During that five year period many of the law graduates will reach senior government positions. This status plus other public service benefits (superannuation etc.) will make it less tempting for them to leave the public legal service. Another method of controlling the number of lawyers entering the private profession would be to limit the number of law students to the number needed for the public service. This would mean that law graduates would have the security of knowing that there was a job waiting for them. In addition, the Government could control the amount of legal work available to the private legal profession by establishing a Legal Corporation to service the present public corporations. The Government could also tighten up the tax laws, increasing taxes for incomes in the highest

69. R. Luckham, "The Political Economy of Legal Professions in the Third World", Conference on Legal Professions, International Legal Center, October 25-28, 1976.

70. M.D. Sahlins, "Poor Man, Rich Man, Big-Man, Chief: Political Types in Melanesia and Polynesia", (1963) 5 *Comparative Studies in Society and History* 285; published in I. Hogbin and L.R. Hiatt, eds., *Readings in Australian and Pacific Anthropology*, (1966) at p.159.

bracket.⁷¹ These actions would make private practice less attractive and less secure, and substantially slow down its rate of growth. But unless the public legal work is made challenging, unless it is fairly compensated and the lawyers are given a feeling of dedication to the country (by the example set by the political leaders), no public legal service will operate with optimum efficiency and skill.

Even with these reforms, lawyers will continue to seek the financial rewards of private practice as long as it is not abolished. In Tanzania with its socialist system of government and dedicated public leaders, prominent members of the bench and the public legal service have recently joined the private profession.⁷² It may be that lawyers in countries that were formerly colonies have been too heavily influenced by the private legal profession and the legal system of the former colonial rulers. They still have a desire to seek the financial rewards that can be gained from private practice. Tanzania is now looking at this problem by referring to the recently established Judicial Review Commission the question whether the country needs a private bar.⁷³ Papua New Guinea should carefully watch the results of this enquiry to see if it is relevant to its own situation.

III. *Conclusion - The Role of a Lawyer in Papua New Guinea.*

The training of lawyers is expensive and the profession attracts many talented people. It may be better to have fewer fully trained lawyers and more para-legals and to use the money saved to train people in other areas of urgent need - e.g. medicine, agriculture, engineering, etc. Since the resources of Papua New Guinea are limited, the Government must decide how they are to be best allocated. Is the contribution made by lawyers to the development of the country more valuable than that of other areas of expertise?

Lawyers perform certain roles - adjudication, rule-making, negotiation, planning and counselling. They also perform certain functions for their clients - provision of information, legitimation and the exercise of power or influence.⁷⁴ Some of these roles and functions are important for a less developed country and others are a drain on the resources of the country. The lawyer acting for his or her clients can provide an important means of communicating legal information to members of the community. But in a less developed country the cost of training sufficient numbers of lawyers to achieve this, by these means, would be exorbitant. The dissemination of legal information in these societies must be accomplished by the use of the mass media, and by personal involvement with the law at the local level.⁷⁵ Legitimation of the claims of private clients may lead to

71. Weisbrot and Paliwala, *op.cit.*

72. M.R.K. Rwelamira, "Report on Research on the Legal Profession in Tanzania", International Legal Center Conference, *op.cit.*

73. *Ibid.*

74. R. Abel, *op.cit.*

75. See T. Huang, "Reflections on Law and the Economy in the People's Republic of China", (1973) 14 *Harvard J. of Int. Law* 261.

the thwarting of the objectives of government policy and hinder development, where lawyers do this by employing their legal expertise to find loopholes in reform legislation.

In providing their clients with the use of power or influence and in their role as planners and counsellors, lawyers can aid the creation of economic surplus by their clients. This surplus can, when properly invested, help to lead to rapid economic growth, but it also leads to an unequal distribution of wealth.⁷⁶ Moreover, in many cases the surplus is invested in projects that do not aid a poor society such as land speculation or luxury industries.

It is debatable whether or not lawyers are better at conflict resolution than other experts. It may even be better for a community to resolve its own problems without expert assistance.⁷⁷ One result of the involvement of lawyers in litigation is that the economic surplus is diminished - lawyers must be paid no matter who wins.⁷⁸ Some of these lawyers may accumulate enough capital and invest it for the benefit of society, but many more will use it for personal indulgence.

In their role as government legal advisors, lawyers have an important technical function to perform. But in recent years the conception of lawyers as an important force in economic development of state enterprises has prevailed in less developed countries. The view of law as an instrument of social change, with the lawyer as the agent or architect of change, has been carried to many less developed countries particularly by American lawyers and law professors under various research projects and legal assistance programmes. It has enabled the lawyers in these countries to bolster their position in the government structure against challenge by the technocrats involved with development planning and implementation.⁷⁹ But it is debatable whether the lawyers deserve this new-found status. As Pozen has stated:⁸⁰

..... this instrumental conception of lawyers as policy-makers has two fatal weaknesses First, almost all the proposed legal reforms are of doubtful feasibility because of the serious non-legal constraints on the performance of state-owned enterprises. These non-legal constraints cannot be overcome by the lawyers who would formulate and enforce these legal reforms for

76. R. Luckham, International Legal Center Conference, *op.cit.*

77. See for example T. Huang, *op.cit.*; J.L. Gibbs, "The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes", (1963) 33 *Africa* 1; J. Berman, "The Cuban Popular Tribunals" (1969) 69 *Colum. L. Rev.* 1317.

78. R. Luckham, International Legal Center Conference, *op.cit.*

79. R. Pozen *Legal Choices for State Enterprises in the Third World*, (1976) 170.

80. *Ibid.*, pp. 170-171.

public corporations. Second, even if some of the proposed legal reforms are feasible, they are desirable only in terms of the interests of particular groups. The interest of lawyers in carrying out the proposed legal reforms may conflict with the goals and objectives for public corporations pursued by other important groups.

These limits on lawyers' functioning raises serious problems in relation to the policy oriented course structure adopted by many law schools in the Third World. These courses are based on the notion that law is an important factor in determining economic performance. One suggestion is that in order to optimise the economic performance of state-owned enterprises in less developed countries, legal education should emphasise the narrow technical tasks, e.g., drafting legislation or corporation contracts.⁸¹

Ideally, however, lawyers should not only have the technical training to perform the work of drafting the legislation, but also sufficient knowledge of both the working of policy and the operation of social processes affecting and affected by the proposed legislation to ensure that such a draft will be adopted and ultimately implemented in the ways intended. The Law Faculty at the University of Papua New Guinea has in recent years adopted a policy oriented approach to law studies studies,⁸² recognising that such a course is essential for its law graduates, most of whom will become public servants. At the same time, the Faculty has introduced optional courses and programmes in Legislative Drafting, Law and Development, Legal Aid Service, and Moot Court to afford students the opportunity to gain technical skills.

Even if the lawyers in a less developed country are properly trained there are limits to the tasks that they can accomplish. A recent case study in Ghana is instructive in reference to the use of lawyers to help promote economic growth. It shows that:

... the choices involved in drafting ...[technical legal] instruments will have little effect on the economic performance of the state-owned enterprises. In short, while lawyers can assist in development efforts as technical translators and publicity agents for political leaders, in their capacity as lawyers they probably cannot make a significant impact on the achievement of economic growth.⁸³

Lawyers have no special claim on making the appropriate decisions in order to achieve economic development. These are decisions that have to be made by the political leaders in Papua New Guinea to decide what kind of lawyers it wants and how these lawyers can help in the achievement of economic growth.

81. *Ibid*, pp. 170-171.

82. R. James, *op.cit*.

83. Pozen, *op.cit*.