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‘Africa Needs Many Lawyers Trained for the Need of their Peoples’ Struggles over Legal Education in Kwame Nkrumah’s Ghana

John Harrington and Ambreena Manji¹

I Introduction

In the immediate post-independence period from the late 1950s, the setting up for the first time of university law schools in many African nations led to often bitter battles over the purpose of legal education.² The stakes in these struggles were high. Writing in 1962, William Twining commented that ‘[o]ne of the common results of Independence is a dramatic increase in the importance attached by governments to education. Since legal education was particularly neglected under colonial rule, it has been legal education that has recently received the greatest push forward.’³ Leaders, such as Tanzania’s Julius Nyerere and Zambia’s Kenneth Kaunda, gave landmark speeches launching law faculties in their national universities in this period.⁴ The same

¹ Respectively, Professor of Global Health Law and Professor of Land Law and Development, Centre for Law and Global Justice, Cardiff University. Thanks are due to Kwabena Oteng Acheampong, Raymond Atuguba, Huw Bennett, Victor Chimbwanda and David Sugarman for discussing aspects of this paper with us. Early versions were presented at seminars of the International Studies Research Unit, Cardiff University, the British Institute of Eastern Africa, Nairobi and the Max-Planck Institut für Rechtsgeschichte, Frankfurt-am-Main. We are grateful to our interviewees for kindly sharing their memories and documents from the period, and the Journal’s reviewers for helpful comments. The usual disclaimer applies. This paper is dedicated to the memory of Gordon Woodman, friend and mentor to both authors from their early careers, and a pioneer of teaching and scholarship in Ghana and the UK.

² See, for example, WL Twining ‘Legal Education in East Africa’ (1966) 12 *International and Comparative Law Quarterly Supplementary Publication* 115-152; YP Ghai, ‘Law, Development and African Scholarship’ (1987) 50 *Modern Law Review* 750-776; PA Thomas, ‘Legal Education in Africa: With Specific Reference to Zambia’ (1971) 22 *Northern Ireland Legal Quarterly* 31, 49; and IG Shivji, *Intellectuals at the Hill: Essays and Talks, 1968-1993* (Dar es Salaam, Dar es Salaam University Press 1993). Issues similar to those we discuss here were also raised in other areas of the (former) British Empire, see for example KYL Tan, ‘A Historical Preclude’ in KYL Tan (ed), *Change and Continuity: 40 Years of the Law Faculty* (Singapore, Faculty of Law, National University of Singapore 1999) 7-60.

³ WL Twining ‘The English Law Teacher in Africa’ (1962) 7 *Journal of the Society of Public Teachers of Law* 80-84, 81.

⁴ JK Nyerere, ‘Inaugural Speech at Opening Ceremony of University College Dar es Salaam, 25th October 1961 [copy on file with authors]; KD Kaunda, ‘The Functions of the Lawyer in Zambia Today’ (1971-1972) 3 *Zambia Law Journal* 1-25.

is true of Ghana, whose first prime minister (later President) Kwame Nkrumah had a personal interest in legal education.⁵ Even before the formal achievement of independence, sometimes conflicting plans were being put in place for legal training in Ghana, a country that had hitherto relied on sending its law students to be trained at the Inns of Court in London and latterly in English universities. The early years of independence from 1957 were marked by considerable disagreements about the constitution and functions of the Law Department at the University of Ghana. These pitted academics, often though not exclusively expatriate, against Nkrumah and his advisors. Tensions came to a head in the period between 1962 and 1964 when the Law Department was at the centre of ‘a whole circle of institutional convulsions ... that went to the very heart of the Ghanaian political system.’⁶ While not determining, these events added impetus to the conspiracy of senior military and political conservatives which overthrew Nkrumah in a coup d’état on 24th February 1966.

Our purpose in this paper is to document these complex struggles, to identify the broader political stakes within them, to pick out the main, competing philosophies of legal education which animated them, and to relate all of these to the broader historical conjuncture of decolonization. We aim ultimately to show that debates over legal education had a significance going beyond the confines of the Law Faculty, that they engaged questions of African nationalism, development and social progress, the ambivalent legacy of British rule and the growing influence of the United States in

⁵ The quote from which we draw the title of this paper is taken from his speech on the opening of the Ghana Law School and the Conference on Legal Education in Africa on 4th January 1962, see K Nkrumah, ‘Legal Education in Africa’ (1962) 6 *Journal of African Law* 103-110, 108. This personal interest, going beyond the concerns of his speech writers, was confirmed by SKB Asante, interview, 8th October 2018 and WC Ekow Daniels, interview, 10th October 2018.

⁶ DH Akenson, *Conor: A Biography of Conor Cruise O’Brien* (Ithaca [NY], Cornell University Press 1994) 223.

these territories. Our study draws on relevant biographies and memoirs of the period, as well as general histories of Ghana under Kwame Nkrumah. It is also informed by a study of relevant primary sources: departmental memoranda from the University, individual responses to these and the reports of external advisors, gathered from personal papers and archived material.⁷ In order to augment our understanding of the detail of events and to grasp the different moods of the time, we interviewed a number of former law teachers and students from the period in Accra in October 2018.

This study builds on the longstanding work on the tensions between academic autonomy and state-building in many post-colonial states in Africa.⁸ If universities were 'born out of nationalist aspirations for freedom', how did they fare as the states to which they were responsible encountered fiscal constraints and political challenges from disillusioned groups in the population.⁹ How did they avoid the impression that their autonomy merely functioned as 'a figleaf for ex patriate anti-national expatriate dominance'?¹⁰ We are particularly indebted to an important paper of 2012 by Jayanth Krishnan, published in this journal, which documents the role of the US Ford Foundation in the development of African law schools in the 1960s.¹¹ In particular it includes an account of Ford's support for law teaching at the University of Ghana and the involvement of US expatriate staff in controversies over legal education. We seek

⁷ Professors SKB Asante and WC Ekow Daniels allowed us to consult their papers. We also studied relevant papers of Conor Cruise O'Brien, held in the Archives of University College Dublin [referenced here as 'UCD Archives'], and those of William Burnett Harvey [referenced here as 'Indiana Archives'] which are held in the on-line collection of the Maurer School of Law, Indiana University at <http://www.repository.law.indiana.edu/histdocs/7>

⁸ See most recently M Mamdani, 'The African University' (2018) 40(14) *London Review of Books* 29-32.

⁹ GP Hagan, 'Academic Freedom and National Responsibility in and African State: Ghana', in M Diouf and M Mamdani (eds), *Academic Freedom in Africa* (Dakar, Codesria 1994) 39-58, 39.

¹⁰ M Mamdani, 'Introduction: The Quest for Academic Freedom', in M Diouf and M Mamdani (eds), *Academic Freedom in Africa* (Dakar, Codesria 1994) 1-16, 2.

¹¹ JK Krishnan, 'Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957- 1977' 52 *American Journal of Legal History* 261-324 (2012).

to incorporate, but also go beyond this work by pursuing three descriptive and theoretical ambitions.

First, while he acknowledges the involvement of British legal Africanists as advisors at the birth of the Ford Foundation initiative, Krishnan's primary focus is necessarily on *American* actors and interests. However, we would argue that the roots of the crisis in Accra are also to be found in the implementation of *British* policy for the development of higher education in its African colonies after 1945 and the transformation of that policy by nationalist administrations as these territories won their independence from the late 1950s on. Of course, American educational thinking influenced British policy and, as Krishnan ably documents, this influence only increased over time. But the basic institutional structures and indeed the material forms (eg. buildings, classrooms) of universities in many of these states were drawn in the first instance from British sources. The need for adding this complementary perspective is reinforced by the cultural affinities and institutional connections at independence between Ghana's academic, legal and social elite and their equivalents in the UK.

Second, Krishnan provides a thorough recounting of what might broadly be called institutional developments, eg. the Ford Foundation's aims, how law schools were founded, the seconding of expatriate staff, and the fate of both. He devotes somewhat less attention to the modes of law teaching which were promoted thereby and how these interacted with inherited British forms previously experienced by local practitioners and scholars. Here, as in earlier work, we propose a somewhat different approach, which draws on what David Sugarman has called 'the intellectual history of

modern legal education'.¹² We focus, therefore, as much on justifications and competing ideas, as on institutions and rival personalities. We hope to show that questions asked then and since about the role of law in development and the proper relation between law and the exercise of state power were already instantiated in debates over the training of lawyers and the education of law students at this hinge-point in colonial and post-colonial history.

Third, and by way of necessary qualification to the foregoing, it is important to avoid treating the struggles in Ghana as the simple outworking of abstract, essentially European (and American) notions about how to teach law. Accra in the early 1960s was not a mere detour from the traffic in paedagogic ideas across the North Atlantic. As recent studies have emphasized in the face of longstanding scholarly neglect, African states were an authentic site for the prosecution of the Cold War.¹³ In this context, and indeed subsequently, the agency of diverse actors was certainly circumscribed by inherited colonial constraints, by the machinations of the superpowers and their allies, and by the pressing need to secure external resources for development. But that agency was never extinguished, much less the capacity of these actors to frame their competing interests and values in discourse. The intellectual history of legal education is, thus, also an African history. It must attend to the manner in which struggles over how to teach law condensed broader conflicts between different classes and political formations within decolonizing states, and to how these conflicts were played out in the realm of ideas as much as in material form.

¹² D Sugarman 'A Special Relationship? American Influences on English Legal Education, c. 1870-1965' 18 (2011) *International Journal of the Legal Profession* 7-57, 8.

¹³ See for example, P Lal, *African Socialism in Postcolonial Tanzania: Between the Village and the World* (Cambridge, Cambridge University Press 2015).

To bring these three ambitions to a point and to anticipate the findings of this paper, we will argue that debates over legal education in early 1960s Ghana pitted an essentially conservative, elite model of legal practice, that looked to Britain for its forms and ethos, against an emergent model of the lawyer as agent of development, centrally involved in the administration of a new nation and the building of African socialism. Beyond the immediate professional context, these different models were also invoked by wider factions in Ghanaian society in aid of their broader political strategies. Their terms were, moreover, shaped by diverse intellectual currents in the Cold War period. Most importantly American scholars and funders saw Ghana as the testbed for a new, properly academic model of legal education which represented a 'third way' between the conservative and instrumentalist approaches. This won favour with some Ghanaian scholars, as a means of ensuring the independence of the Law Department vis-a-vis the government, but also with locally based British academics anxious to establish law as a legitimate university subject within UK universities. Our research shows, however, that this eagerness for change among some, was matched by an enduring attachment to English forms among others. That was not confined to political conservatives either. We will see that nationalist radicals too privileged orthodox English modes of teaching over American innovation.

The paper is organised as follows. In the next section, we set the general background, considering key British policy documents on higher education in the African colonies, produced towards the end of the Second World War. A new policy consensus from that time underpinned the establishment of the University College of the Gold Coast (later University of Ghana) in 1948 among others. These colleges aimed at the creation of an indigenous elite, relatively small in number, ready to take over leadership at

eventual independence. To this end, they proposed a model whereby the international standing of new colonial universities was underwritten by formal links with the University of London and the presence of expatriate staff. We then trace the manner in which these objectives were realized by the University College of the Gold Coast (later 'Ghana') as a whole and in particular by its Law Department, founded in 1958. It will be seen that an initial period of stability was followed by increasing conflict over funding and autonomy, as Ghana's economic situation deteriorated and the government sought to assert greater political control in the face of regional and class-based opposition to President Nkrumah. Conflict with the judiciary and the use of preventive detention were accompanied by government attempts to influence appointments and teaching at the University, leading ultimately to the deportation of the American Dean. We then review the creation of the Ghana Law School, as a rival to the University Law Department, which was pursued during this time of academic and political contention. As we will discuss at length, three main conceptions of legal education were proposed in these debates: an instrumentalist model, associated with the government, which sought ways to bypass the university and to train the large number of lawyers needed for development; a humanistic American model which emphasized interactive teaching methods over lecturing, and which would give the university a monopoly of training; and a traditionalist model which sought continuity with British forms of legal professionalism and teaching practice. We note the resonance of each model with specific local and international political tendencies. We consider particularly the important and growing role played by Ghanaian political and educational actors in these struggles. We attend to student perceptions and the nature of their own interventions in the academic politics of the period.

II From 'Adaptation' to the 'Gold Standard': Education and the End of Empire

British policy on education in its African colonies went through two significant phases in the period from the end of the First World War. The first was aimed at supporting the general policy of exercising control through local chiefs exercising customary powers or 'indirect rule'.¹⁴ A White Paper of 1924, based on the work of the Advisory Committee on Native Education in Tropical Africa,¹⁵ was shaped by a fear that widely available secondary and higher education would lead to the creation of an intellectual proletariat or 'babu class', as in 19th century India, capable of challenging the authority of traditional rulers on which British domination rested.¹⁶ Emphasis was placed instead on collaboration with missionary educators and the provision of primary schooling in vernacular languages, rather than English. In the manner of programmes for rural black communities in the southern United States, syllabuses would be 'adapted' to the needs of local students and have a strongly vocational focus.¹⁷ This was supported by colonial anthropology which articulated concerns about 'detrribalization' resulting from uncontrolled contact with western modernity. Nationalist thinkers in the Gold Coast, such as JE Casely Hayford, and elsewhere, bitterly criticised this policy, for effectively confining Africans to subordinate roles in administration and the economy. They

¹⁴ See C Whitehead 'Education Policy in British Tropical Africa: The 1925 White Paper in Retrospect' (1981) 10 *History of Education* 195-203.

¹⁵ Later renamed the Advisory Committee on Education in the Colonies.

¹⁶ Educational Policy in British Tropical Africa Cmd. 2374 (London: Colonial Office 1924).

¹⁷ The policy took the name of the Phelps-Stokes Fund, a charity which supported adapted education in the US and was invited to investigate education provision in British Africa by the Colonial Office in 1922; see further U Bude, 'The Adaptation Concept in British Colonial Education' (1983) 19 *Comparative Education* 341-355.

argued for a literary-oriented education, beyond primary level, that would allow upward mobility and circumvent the power of chiefs.¹⁸

The second phase followed the Second World War and was provoked by growing criticism of indirect rule. The system of traditional authority was undermined by increasing population movement to towns and cities. The extractive economy, which indirect rule and adaptive education served, had been badly affected by the Depression of the 1930s.¹⁹ The widespread stagnation and rural poverty which ensued opened Britain to embarrassing criticism in international fora and by its wartime ally, the United States.²⁰ With the passage of Colonial Development and Welfare Acts in 1940 and 1945 'modernization' took prominence in imperial policy making. It was matched by an acceptance that African self-government could not be resisted in the long run. Governors and officials were now urged, not to suppress, but to cultivate dependable local nationalism and its often Western-educated leaders.²¹ Caution in education policy was replaced by a significant expansion of primary and secondary schooling.²² The official position on higher education also changed dramatically. According to one influential report, rather than the creation of new universities being politically dangerous, it was their absence which threatened the colonial status quo.²³ The Elliott

¹⁸ See S Küster, "'Book Learning" versus "Adapted Education": The Impact of Phelps-Stokesism on Colonial Education Systems in Central Africa in the Interwar Period' (2007) 43 *Paedagogica Historica* 79-97.

¹⁹ A Cousins, 'Governing Africa: The Imperial Mind in British Colonies, 1938-1947, in the Light of Indian Experience' (1999) 27 *Social Scientist* 140-167, 153.

²⁰ P Kalloway, 'Welfare and Education in British Colonial Africa and South Africa during the 1930s and 1940s' (2005) 41 *Paedagogica Historica* 337-356, 348.

²¹ A Cousins, 'Governing Africa: The Imperial Mind in British Colonies, 1938-1947, in the Light of Indian Experience' (1999) 27 *Social Scientist* 140-167, 160.

²² C Whitehead, 'The Historiography of British Imperial Education Policy, Part II: Africa and the Rest of the Colonial Empire' (2005) 34 *History of Education* 441-454, 445.

²³ The 1933 report by James Currie, a member of the Advisory Committee on Native Education in Tropical Africa is discussed in C Emudong, 'The Gold Coast Nationalist Reaction to the Controversy over Higher Education in Anglophone West Africa and its Impact on Decision Making in the Colonial Office, 1945-47' (1997) 66 *Journal of Negro Education* 137-146, 139-140.

Commission which reported to the Colonial Office on West Africa in 1945 was divided.²⁴ The majority proposed separate university colleges in each of Britain's territories in the region, the minority a single institution at Ibadan, with extra-mural centres in the Gold Coast, Sierra Leone and elsewhere in Nigeria. Nationalist outcry in the Gold Coast forced the Labour government to follow the majority and, as a result, three independent colleges was approved, including one centred on the government high school at Achimota near Accra, which opened in 1948.²⁵

More than half of the initial cost of the new college was met by a grant from the Cocoa Marketing Board, which had itself been made possible by nationalist education campaigns to convince cocoa farmers of its importance.²⁶ But how was it to be run? This essential question was addressed by the Asquith Commission, whose report on the tasks and orientation of new universities across the wider British Empire was so influential that it lent its name to a particular philosophy of higher education.²⁷ The 'Asquith doctrine' profoundly marked the first decade of the University College of the Gold Coast and set the parameters for the debates on legal education which are the focus of this paper. It needs to be understood against the backdrop of British imperial strategy after 1945. Accepting that self-government was increasingly likely, governments in London sought to maintain control over the process and to ensure an enduring influence over former colonies.²⁸ In this spirit Asquith aimed at creating of an

²⁴ Report of the Commission on Higher Education in West Africa, 1944-45, Cmd. 6655.

²⁵ C Emudong, 'The Gold Coast Nationalist Reaction to the Controversy over Higher Education in Anglophone West Africa and its Impact on Decision Making in the Colonial Office, 1945-47' (1997) 66 *Journal of Negro Education* 137-146. Achimota had been founded in 1924 by the progressive governor of the time Sir Gordon Guggisberg, see ICM Maxwell, *Universities in Partnership. The Inter-University Council and the Growth of Higher Education in Developing Countries 1946-70* (Edinburgh, Scottish Academic Press 1980) 84.

²⁶ F Agbodeka, *A History of the University of Ghana: Half a Century of Higher Education 1948-1998* (Accra, Noeli Publishing Services, 1998) 13.

²⁷ Report of the Commission on Higher Education in the Colonies, 1944-45, Cmd. 6647.

²⁸ K O'Sullivan, "'The Wind of Change": Decolonisation in British West Africa' (2006) 14(4) *History*

imperial family of universities which would prepare elites capable of ruling independent states, linked by ties of learning and practice to Britain.²⁹ At its heart was a concern that the quality of teaching would be in no way inferior to that of British universities. African institutions should be pegged to an academic 'Gold Standard' which would allow their graduates 'to enter the world community of intellect' on equal terms.³⁰ This aim was realized through the creation of a 'special relationship' between the new colleges and the University of London.³¹ The latter approved syllabuses, scrutinized examination processes and participated in staff appointments. In the early years most academics were ex patriates, recruited in the United Kingdom through the Inter-University Council for the Higher Education in the Colonies established in 1946. This external orientation to Britain was to be matched internally by clear separation from local administrations and political forces. Though funded by the state, the new colleges would be self-governing, their autonomy a pre-condition of entry into relationship with the University of London.³² Finally, Asquith favoured residential universities, with students of diverse geographic and ethnic backgrounds studying and living together on the Oxbridge model.³³ Cultural and institutional separateness was reinforced by the physical location of the new campuses, which were often built on hills set apart from capital cities.³⁴

Ireland 40-45.

²⁹ E Ashby, *African Universities and Western Tradition* (London, Oxford University Press 1964) 20.

³⁰ ICM Maxwell, *Universities in Partnership. The Inter-University Council and the Growth of Higher Education in Developing Countries 1946-70* (Edinburgh, Scottish Academic Press 1980) 13.

³¹ See E Ashby and M Anderson, *Universities: British, Indian, African. A Study in the Ecology of Higher Education* (London, Weidenfeld and Nicolson 1966) 233ff.

³² ICM Maxwell, *Universities in Partnership. The Inter-University Council and the Growth of Higher Education in Developing Countries 1946-70* (Edinburgh, Scottish Academic Press 1980) 33.

³³ ICM Maxwell, *Universities in Partnership. The Inter-University Council and the Growth of Higher Education in Developing Countries 1946-70* (Edinburgh, Scottish Academic Press 1980) 17.

³⁴ This was true of the University Colleges at Makerere in Uganda and in Dar es Salaam in Tanganyika (Tanzania), for example.

III 'An Academic Centre of National Life': the University College of the Gold Coast

Both physically and in terms of standards, the University College of the Gold Coast reflected the basic ethos of the Asquith report. Founded in 1948, it was set on Legon hill, then about 10 miles from the capital. The College was materially and intellectually removed from everyday life. Its first Principal was David Mowbray Balme, a former classics lecturer at Cambridge University. Under his guidance, the University College was conceived on the Oxbridge model, built around quadrangles, with each student belonging to a Hall of Residence with its own gown. Dining was required, with grace said in Latin.³⁵ Balme took pride in maintaining the 'gold standard', through the College's links with the University of London. Ghana, he wrote,

cannot afford and would not wish to have the graduates of its University considered of lower standing than those of other universities.³⁶

Contemporary observers like Sir Eric Ashby, a senior British educationalist active in higher education reform in Africa, criticized these arrangements as 'a vivid expression of British cultural parochialism' married to imperial self-interest.³⁷ He noted how the University, 'established in palatial premises ... outside the city, drew its skirts around its affairs and became (as an architect boasted of its quadrangles) "inward-looking"'. Culturally, he said, it was 'isolated from the life of the common people in a way which has had no parallel in England since the Middle Ages.' Nkrumah's Attorney General

³⁵ These practices and the wider significance of the classics at the University College in this period is discussed in F Agbodeka, *A History of the University of Ghana: Half a Century of Higher Education 1948-1998* (Accra, Noeli Publishing Services, 1998) 58ff.

³⁶ Quoted in G Bing, *Reap the Whirlwind* (London, MacGibbon & Kee 1968).

³⁷ E Ashby, *African Universities and Western Tradition* (London, Oxford University Press 1964) 19.

and *eminence grise*, Geoffrey Bing was still harsher, pointing out the inconsistency between the University's modernizing mission and its imported rituals.

The incantations of an African priest or the pouring of libation was dismissed as irreverent barbarism but the recitation of a grace in Latin and the circulation of the port in the proper direction at High Table...was essential for the proper education of the scholar....It would have been thought unfair...to have deprived the Principal of his juju when clearly he was so genuinely convinced that his magic would improve the educational prospects of his undergraduates.³⁸

We will return to discuss Bing's key role in the reform of legal education in subsequent sections. For now it should be noted, however, that the form and ethos of the Asquith Universities were popular, in their early years at least, not only with ambitious students and local staff, but also at least initially with nationalist leaders, who had chafed at the limitations of missionary and adapted education.³⁹ Even the radical Convention Peoples Party of Kwame Nkrumah could declare in its 1954 manifesto an 'ambition to make the university among the finest places of learning on earth'.⁴⁰ This attitude was to change as issues of higher education standards, financing, staffing and autonomy became a key focus for contestation between political factions in the Gold Coast. Ultimately Nkrumah's wish that the university should be 'an academic centre of national life'.⁴¹ As the then sole university in the country, it symbolized the independent nation as such.⁴² But it also had to serve the practical needs of the people, a concern that

³⁸ G Bing, *Reap the Whirlwind* (London, MacGibbon & Kee 1968).

³⁹ This was true in East, as well as West Africa, see for example C Sicherman, *Becoming an African University. Makerere 1922-2000* (Trenton [NJ], Africa World Press 2005) 20ff.

⁴⁰ ICM Maxwell, *Universities in Partnership. The Inter-University Council and the Growth of Higher Education in Developing Countries 1946-70* (Edinburgh, Scottish Academic Press 1980) 145.

⁴¹ Kwame Nkrumah letter to Conor Cruise O'Brien, 21st February 1962, UCD Archives P82/97(1).

⁴² See further, H Fuller, *Building the Ghanaian Nation-State. Kwame Nkrumah's Symbolic Nationalism* (London, Palgrave 2014).

came to predominate in his thinking and in the stance of his government. The tensions between these ambitions were particularly evident in relation to legal education both at the University and beyond. Before examining them in detail it is worth reflecting on the evolving role of the legal profession in the politics of pre- and post-independence Ghana, which provides significant background for the academic struggles of the early 1960s.

IV 'Lawyer-Merchants' and 'Verandah Boys': Politics and the Legal Profession

The British authorities in the Gold Coast first permitted and recognized the practice of law in the 1853.⁴³ The opportunity which this presented was taken up by the sons of prosperous classes in the Colony region along the coast. Lacking facilities for training lawyers locally, young men were sent to London to attend the Inns of Court. This formation, as well as their class background, created a cultural and professional bond with England and a notable political and social conservatism.⁴⁴ These ties were sustained by their very mode of practising law, which was focussed above all on litigation and also by the exclusive focus at the Inns on English law.⁴⁵ African students there acquired no knowledge of customary law, although several researched and published on field after their return.⁴⁶ Their educational links meant that some viewed

⁴³ SO Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' 39 *McGeorge Law Review* 903-976, 913 (2008).

⁴⁴ See further R Luckham 'The Ghana Legal Profession: The Natural History of a Research Project' (1976) 8 *Journal of Legal Pluralism and Unofficial Law* 106-144.

⁴⁵ SO Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' 39 *McGeorge Law Review* 903-976, 916 (2008).

⁴⁶ See for example, JE Casely-Hayford, *Gold Coast Native Institutions: With Thoughts Upon A Healthy Imperial Policy for the Gold Coast and Ashanti* (London: Cass 1970 [1903]).

returned-barristers as 'London's special partners among the political class'.⁴⁷ Others have rightly pointed out that the Gold Coast movement for independence and Pan-African liberation disproportionately featured just such lawyers.⁴⁸ Perhaps for that very reason, this group was relied on by the Colonial Office and governments in London to take and exercise power responsibly when the time came for independence. British caution regarding the creation of a 'babu class' hostile to colonial power, noted above, was particularly acute in the case of lawyers. As a result no widening of legal education beyond the Bar was contemplated until 1950. From that point scholarships were provided to a select group of Gold Coast students to read law at British universities, a scheme continued and expanded by the government of independent Ghana.⁴⁹ While some law teaching was offered as part of the degree course in sociology at Legon, the establishment of a fully-fledged law department would await the end of the decade.

The campaign for self-government in the Gold Coast had been initiated after the Second World War by the United Gold Coast Convention (UGCC). This was in effect a coalition of chiefs and an educated class, mostly made up of the English-trained lawyers just discussed.⁵⁰ It was through them that Kwame Nkrumah, originally from the south western region of Nzima, who had studied at Lincoln University in the US, before moving to England in 1945, made his debut in the politics of his homeland. At each stage he encountered and was influenced by Pan-African thinkers, like CLR James and George Padmore, as well as future African leaders, such as Jomo

⁴⁷ This view was popular among Nkrumah's Ghanaian and expatriate followers, see for example, B Davidson, *Black Star. A View of the Life and Times of Kwame Nkrumah* (London, Allen Lane 1973) 56.

⁴⁸ SKB Asante, 'The Role of the Early Generation of Lawyers in establishing Good Governance' (2014) 27 *University of Ghana Law Journal* 1-6.

⁴⁹ SKB Asante, 'Recollection of the History of the Law Faculty at Legon: The Turbulent Early Years' in University of Ghana Faculty of Law, *50th Anniversary Celebrations – Grand Durbar*, 20th April 2009 [copy on file with authors].

⁵⁰ D Birmingham, *Kwame Nkrumah. The Father of African Nationalism* (Athens [OH], Ohio University Press 1998) 11.

Kenyatta.⁵¹ On the basis of his reputation for practical skills and intellectual independence Nkrumah was invited back from England to take up the position of general secretary by the UGCC by its elite leaders in 1947. The relationship soon deteriorated, however, and in June 1949 Nkrumah broke away to form the Convention Peoples Party (CPP) which was more insistent and urgent in its demand for independence than the gradualist UGCC.⁵² The latter, as Dennis Austin wrote,

had a liberal view of society – a lawyer’s view perhaps; they were never quite able to understand the appeal or techniques of mass organisation; and they had a lawyer’s caution too, against rash precipitate action.⁵³

Nkrumah’s capacity to mobilize ex-soldiers and urban workers, his subsequent success in the elections of 1951, 1954 and 1956, and his accession to power, as Prime Minister of the Gold Coast under British rule, then of independent Ghana in 1957, and as President from 1960, ensured an enduring enmity between him and his former employers.⁵⁴ Led by a group of ‘lawyer-merchants’, they articulated their refusal in class terms, dismissing Nkrumah and his followers as under-educated ‘verandah boys’.⁵⁵ In Davidson’s words, though ‘Britain’s true friends’, they now had to ‘stand by and watch the “rabble” as it swarmed into the seats of power that Britain had reserved for them?’⁵⁶ They criticized Nkrumah’s government for corruption and inefficiency, complaints which increasingly resonated with a wider public as the regime put

⁵¹ D Birmingham, *Kwame Nkrumah. The Father of African Nationalism* (Athens [OH], Ohio University Press 1998) 13

⁵² D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 85.

⁵³ D Austin, *Ghana Observed. Essays on the Politics of a West African Republic* (Manchester, Manchester University Press 1976) 12-13.

⁵⁴ After independence the British monarch remained as Ghana’s head of state until the Republican constitution of 1960 vested this position in the new office of President.

⁵⁵ D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 181.

⁵⁶ B Davidson, *Black Star. A View of the Life and Times of Kwame Nkrumah* (London, Allen Lane 1973) 56.

development ahead of individual consumption in its economic policies.⁵⁷ Indeed surpluses from the rising world price of cocoa in the mid-1950s, Ghana's primary export, were appropriated by the centralized, independent state in the same manner as its colonial predecessor. As the price of cocoa fell again in the early 1960s Nkrumah introduced compulsory national savings and raised taxes on imported consumer goods to maintain the balance of payments and sustain investment in heavy industry. Resistance to such policies led to the creation, in 1954, of the National Liberation Movement (NLM), a new, more radical opposition party based in the Ashanti region which lobbied for a federal constitution and later merged with the UGCC to form the United Party.⁵⁸ Former CPP supporters, such as trade unionists and market women, fell away from the party and allied themselves with the NLM and more traditional opponents, such as farmers, chiefs and lawyers.⁵⁹

Economic difficulties accentuated the increasing political challenge to Nkrumah's government. Electoral failure on the part of the opposition saw them embrace, both constitutional and, what Austin called, 'extra-constitutional' methods.⁶⁰ In some cases, this involved amplifying the demands of other groups, as in the case of mass strikes by railway, bus and port workers in 1961 and by gold miners in 1964. The resistance to centralization of chiefs and of specific regions, like Ashanti and the Northern province, was similarly articulated to the wider cause. More serious still was an alleged coup plot in 1958, a series of bomb attacks on CPP meetings, and two assassination attempts on Nkrumah himself in 1958 and 1964. In response the government itself

⁵⁷ See D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 400ff.

⁵⁸ See D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 253ff.

⁵⁹ D Birmingham, *Kwame Nkrumah. The Father of African Nationalism* (Athens [OH], Ohio University Press 1998) 90ff.

⁶⁰ D Austin, *Ghana Observed. Essays on the Politics of a West African Republic* (Manchester, Manchester University Press 1976) 99.

had recourse to extra-constitutional measures, earning Nkrumah the reputation of dictator, particularly in Britain and the United States.⁶¹ The erection of statues of the President at many locations around the country and the establishment of a CPP Ideological Institute at Winneba were seized on as signs of this. But most fateful was the Preventive Detention Act 1958 which allowed internment without trial and was largely used against political opponents. Bing was widely seen as the architect of this legislation and he defended it in court and subsequently in his memoirs. By the time of Nkrumah's overthrow in 1966 over 1,000 people were so detained. The most prominent of them, JB Danquah, former UGCC leader and pioneer of the independence campaign, died in custody in 1965.

Nkrumah reconstructed the 'independence' constitution, agreed with the British, steadily gathering executive powers to himself.⁶² Between 1958 and 1962 he assumed the offices of Interior and Foreign Affairs minister, as well as Supreme Commander of the Armed Forces. This culminated in the declaration of a one-party state after a rigged plebiscite of 1964.⁶³ Expatriate critics were deported and opposition leaders, such as Kofi Busia, as well as disenchanted CPP stalwarts like KA Gbedemah, went into exile. The formerly independent trade union congress was subordinated to the ruling party in 1957. This tendency was reinforced by Geoffrey Bing's success, as Attorney General in persuading the Supreme Court that the new republican constitution of 1960 did not empower judges to strike down measures for incompatibility with fundamental rights.⁶⁴

⁶¹ D Birmingham, *Kwame Nkrumah. The Father of African Nationalism* (Athens [OH], Ohio University Press 1998) 96-97.

⁶² These developments are well outlined in OY Asamoah, *The Political History of Ghana (1950-2013). The Experience of a Non-Conformist* (Bloomington [In], Author House 2014) 42-58.

⁶³ D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 414-415.

⁶⁴ *Baffour Osei Akoto*, Civil Appeal No. 41/61, 28th August 1961. The case arose from a challenge to the Preventive Detention Act 1958 on grounds of habeas corpus. An unsuccessful argument that the constitution contained an US-style Bill of Rights was made by JB Danquah as counsel for the appellants. The Act and the case are thoroughly discussed in WB Harvey, *Law and Social Change in Ghana*

The drift to authoritarianism was particularly evident in relations with the judiciary. Measures in response to the wave of strikes in 1961 included declaring a state of emergency and the creation of a Special Court of three judges to try security-related cases arising under it, with no appeal permitted.⁶⁵ When the Supreme Court acquitted three politicians, originally allies of Nkrumah, charged with involvement in the 1962 assassination attempt, the Constitution was amended to allow the President to dismiss any judge of the superior courts. Nkrumah then sacked the Chief Justice Sir Arku Korsah who had presided over the trial. His replacement Sir Julius Sarkodee-Addo re-heard the case and delivered a guilty verdict.⁶⁶

V 'Positive Neutralism': Colonial Freedom and the Cold War

These struggles had a wider resonance. As the first African state to win independence, Ghana was the object of considerable attention from the United States the Soviet Union, and the former colonial powers in Europe, but also from anti-colonial and black liberation movements in Africa and North America. US-funded conferences on higher education in Accra were matched by continent-wide gatherings of African nationalists and Ghana's partners in the non-aligned movement. The President continued the engagement with pan-Africanist thinkers which had marked his years abroad, numbering among his advisors George Padmore and Ras Makonen, as well as the renowned African American

(Princeton [NJ], Princeton University Press 1966) 280-291.

⁶⁵ The case is discussed in OY Asamoah, *The Political History of Ghana (1950-2013). The Experience of a Non-Conformist* (Bloomington [In], Author House 2014) 53-55.

⁶⁶ This apparent contravention of the rule against double jeopardy was enabled by a Presidential decree rendering the original trial void. The latter had itself been made possible by a swiftly passed amendment of the legislation establishing the Special Court, see WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 236.

educationalist WEB Du Bois. British left wingers and anti-apartheid activists were invited to join the teaching staff at Legon. The former included Professor Alan Nunn May, a physicist who had disclosed nuclear secrets to the Soviets in the interest of keeping the balance of power, as well as Dennis Pritt, a London barrister known for defending anti-colonial militants in Kenya and elsewhere in the British empire.⁶⁷ The latter included Dr Joseph Gillman, an emigré South African doctor who intervened to stop a US-Ghanaian partnership to build a medical school at the University.⁶⁸

Ghana's international posture of 'positive neutralism', which involved steering a course between the Cold War superpowers and trying to realize nationalist and Pan-African objectives, was a central concern of Nkrumah's Attorney General Geoffrey Bing, another of these political migrants to Ghana, who we have already mentioned above. Bing left a barrister's practice in London, having also served as a Labour MP under the Atlee government between 1945 and 1950. Firmly on the 'Bevanite' left wing of the party, he had been active in the influential Movement for Colonial Freedom which campaigned for more or less immediate British decolonization in the 1940s and 50s, rejecting the gradualist approach shared by their counterparts in the Fabian Society and the Colonial Office.⁶⁹ The Movement counted among its collaborators and allies many vanguard nationalists in India and Africa, including the young Kwame Nkrumah.⁷⁰

⁶⁷ R De, 'The Flying QC: The Postcolonial Career of DN Pritt and the Jurisprudence of Decolonization' (forthcoming).

⁶⁸ D Akenson, *Conor. A Bibliography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 236.

⁶⁹ See S Howe, *Anti-Colonialism in British Politics. The Left and the End of Empire, 1918-1964* (Oxford, Oxford University Press 1993) 250.

⁷⁰ S Howe, *Anti-Colonialism in British Politics. The Left and the End of Empire, 1918-1964* (Oxford, Oxford University Press 1993) 236.

Bing promoted law reform relevant to Ghana's needs with a degree of success remarked on even by those critical of his authoritarian tendencies.⁷¹ Expatriate advisors, all of whom either had already gained eminence in British legal scholarship, or would do so over the following decades, were engaged to help produce new legislation. They included LCB Gower in company law, Patrick Atiyah in the law of contract, and Francis Bennion in statutory drafting. This pragmatism was also evident in 1957 when he (unsuccessfully) lobbied the Ford Foundation in the US to support the development of legal education in Ghana.⁷² Bing also advised the Nkrumah government on trade deals between Eastern Bloc states and Ghana for the export of coffee and bauxite in return for loans and technical assistance, while also negotiating contracts with western mining concerns.⁷³ He was active at the United Nations too, lobbying the Security Council to support Nkrumah's opposition to the white settler regime in Southern Rhodesia.⁷⁴ His alleged influence over the President, in this regard, was sometimes attributed to his alleged membership of the Communist Party of Great Britain or fellow traveller inclinations. Though the British security services suspected him of this, it is difficult to prove either way as Bing seems to have burned his papers before leaving Ghana in 1966 and he only makes indirect reference to the question in his memoir.⁷⁵

⁷¹ SKB Asante, interview, 8th October 2018; SK Date-Bah, interview, 10th October 2018.

⁷² See 'Proposal from the Ghana Ministry of Justice to the Ford Foundation on the Provision of Legal Education in Ghana - 12 February 1958' cited in JK Krishnan, 'Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957- 1977' 52 *American Journal of Legal History* 261-324. Ford held off due to concerns about academic quality.

⁷³ His approach to the latter was considerably more circumspect and respectful of private property interests than his radical reputation would have allowed for: WC Ekow Daniels, interview, 10th October 2018.

⁷⁴ WC Ekow Daniels, interview, 10th October 2018. See also see T Benn, *Out of the Wilderness: Diaries 1963-67* (London, Hutchinson 1987) 60.

⁷⁵ A document in the British National Archives from 1956 refers to Bing as having been a member of the CPGB's 'secret legal group' before the Second World War and a 'fellow traveller' after it: TNA V 2/3819. See also, G Bing, *Reap the Whirlwind. Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon and Kee 1968) 227ff.

Nkrumah was also accused of pro-Soviet sympathies by critics throughout his career. Historians suggest that this claim was in fact the product of a misapprehension on the part of the British authorities and, later, the tactical desire of the Ghanaian opposition to align its cause with that of anti-communist lawmakers on Capitol Hill.⁷⁶ Nkrumah's rule was in fact marked by considerable openness to the US, at least in early years, which made much of its own anti-colonial origins in its engagement with Africa in the late 1950s. His turn towards the USSR and its allies came relatively late and was motivated less by ideology and more by disillusionment with the West in the aftermath of the Congo crisis of 1960-61 and the realization that US government and commercial involvement in his flagship dam and smelter project on the Upper Volta river had proved more disadvantageous than expected.⁷⁷

Notwithstanding these foreign policy turns, independent Ghana was consistent in its leading role in the movement of non-aligned states.⁷⁸ Nkrumah challenged French policy in Algeria and welcome freedom fighters from across the continent to Accra.⁷⁹ The most tangible manifestation of this commitment was the contribution of around 2,000 troops to the UN mission in the Congo and a diplomatic push in support of beleaguered President Patrice Lumumba.⁸⁰ It was out of that context that Bing recruited the Irish diplomat, Conor Cruise O'Brien, as Vice-Chancellor of the University

⁷⁶ See respectively, E Nwaubani, *The United States and Decolonization in West Africa, 1950-1960* (Rochester [NY], University of Rochester Press 2001) 121; and OY Asamoah, *The Political History of Ghana (1950-2013). The Experience of a Non-Conformist* (Bloomington [In], Author House 2014) 73.

⁷⁷ E Nwaubani, *The United States and Decolonization in West Africa, 1950-1960* (Rochester [NY], University of Rochester Press 2001) 162.

⁷⁸ E Nwaubani, *The United States and Decolonization in West Africa, 1950-1960* (Rochester [NY], University of Rochester Press 2001) 136-139.

⁷⁹ OY Asamoah, *The Political History of Ghana (1950-2013). The Experience of a Non-Conformist* (Bloomington [In], Author House 2014) 86-104.

⁸⁰ E Nwaubani, *The United States and Decolonization in West Africa, 1950-1960* (Rochester [NY], University of Rochester Press 2001) 146ff.

of Ghana in September 1962. While serving as UN special envoy in the Katanga region during the crisis of 1961, Cruise O'Brien had vigorously and vocally resisted the efforts of the former colonial power, Belgium and its western allies, to retain significant influence over independent Congo, including partition of the country.⁸¹ Having resigned in protest at the UN's own failure to block these neo-colonial ambitions, and given his record as a scholar and author, he was considered by Nkrumah to be an ideal leader for the national university of a former British colony, like Ghana.⁸² Moreover Bing, who had grown up in Northern Ireland, was sympathetic to Cruise O'Brien's earlier work on the Irish government's anti-partition drive in the late 1940s and 1950s and had contributed a pamphlet for world-wide distribution as part of this campaign.⁸³ However, the relationship between Cruise O'Brien on the one hand and Nkrumah and Bing on the other deteriorated due to conflicts over academic freedom in the university generally and in its law faculty in particular as we will see in the following sections.

⁸¹ For his own account, see C Cruise O'Brien, *To Katanga and Back. A UN Case History* (London, Hutchinson 1962).

⁸² B Davidson, *Black Star. A View of the Life and Times of Kwame Nkrumah* (London, Allen Lane 1973) 56.

⁸³ D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 133.

VI 'A Troubled University in a Troubled Land': Conflict at Legon

The University at Legon became a site of struggle between Nkrumah's government and an array of opposition forces, as well as Ghanaian and expatriate academics, in the early 1960s for four main reasons.⁸⁴ First, the deteriorating economic situation meant that the government grew more aware of the cost of running the University in its then current format. Of the 13% of national budget in 1960 dedicated to education, a full 40% was absorbed by the University.⁸⁵ Given that the pool of eligible entrants was made up of only 16,000 secondary students, this represented a considerable skewing of resources. With funds becoming tighter, Nkrumah and his advisors felt justified in taking steps to ensure that they were getting value for money.⁸⁶ A 'sense of urgency' about Ghana's developmental needs allowed the government to look past inherited governance constraints.⁸⁷ Second, the government's growing disaffection with the US and its allies, including the UK, registered locally in an atmosphere of suspicion and accusation. Expatriate staff at the University were accused of spying, and of promoting neo-colonialist and racist attitudes. Third, some Ghanaian staff were openly associated with and involved in the opposition movement focussed on the United Party. KA Busia, professor of sociology, was most notable among these. Furthermore, though the student body reflected a broad spectrum of social and economic, though not regional diversity on the whole it appears to have been

⁸⁴ For a first-hand account by the then Vice-Chancellor and Professor of Classics, see AA Kwapong, *A Life in Education: A Memoir* (Legon-Accra, Sub-Saharan Publishers 2016) 183-185.

⁸⁵ D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 227.

⁸⁶ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 358.

⁸⁷Speech by Osagyefo, the Chancellor of the University of Ghana at the Inauguration of the University of Ghana', 25th November 1961, UCD Archives, P82/97.

increasingly less inclined to support the CPP.⁸⁸ Fourth and underpinning all of these was the government's residual suspicion of the intelligentsia. As Dennis Austin put it,

the location of political power in Ghana ... was out of line with the very high status accorded the educated elite of the universities... Successive governments looked jealously at the intellectual pretensions of an academic elite, many of whom could hardly bear to endure their exclusion from office.⁸⁹

In a combination of 'nationalist assertion and financial restraint',⁹⁰ students and staff, whether domestic or expatriate, were thus targeted by the authorities in their move to centralize power and defend the President. Legon was, as one expatriate lecturer put it, 'a troubled university in a troubled land'.⁹¹

These tensions came to the fore when the University College abandoned its formal link with the University of London in 1961 and became the University of Ghana, with Kwame Nkrumah as its Chancellor. Controversy immediately followed as the government formally dismissed all academic staff, ostensibly on the grounds that their employer had changed.⁹² Foreign lecturers were particularly fearful that this would lead to a purge. Although in the event only 6 lost their jobs, claims of a dire threat to

⁸⁸ A study conducted by the Statistical Training Centre at Achimota college indicated that only 1.5% of students' fathers [sic] were professionals, quoted in C Cruise O'Brien, Vice-Chancellor's Address to Congregation, 27th March 1965, UCD Archives P82/109.

⁸⁹ D Austin, *Ghana Observed. Essays on the Politics of a West African Republic* (Manchester, Manchester University Press 1976) 167, 169.

⁹⁰ D Austin, *Ghana Observed. Essays on the Politics of a West African Republic* (Manchester, Manchester University Press 1976) 167, 169.

⁹¹ R Seidman, Letter from a Deportee (n.d.), UCD Archives, P82/121.

⁹² SKB Asante, 'Recollection of the History of the Law Faculty at Legon: The Turbulent Early Years' in University of Ghana Faculty of Law, *50th Anniversary Celebrations – Grand Durbar*, 20th April 2009 [copy on file with authors].

academic freedom found an echo with political and educational commentators internationally, adding to Nkrumah's growing reputation as autocrat.⁹³

These conflicts also played out in and around the University Law Department, founded in 1958, with dedicated funding from the government, and admitting its first students (a total of 30) in 1959.⁹⁴ JHA Lang was recruited from the UK to as its first Dean by Bing on the advice of Sir David Hughes-Parry Director of Advanced Legal Studies in the University of London.⁹⁵ Lang came to Ghana having been forced to resign his post as legal counsel at Imperial Chemical Industries when his wife's earlier membership of the Communist Party of Great Britain came to light. As Dean he recruited three young Ghanaian law lecturers, along with two from the UK.⁹⁶ Supplementary teaching was provided by eminent legal practitioners. However Lang's tenure came to a controversial end when he resigned in January 1962 in protest at Nkrumah's insistence, without further consultation, one of the Ghanaian staff, Alex Kuma, widely seen as a CPP loyalist, be promoted to a Presidential chair.⁹⁷ The new Dean, William Burnett Harvey, took over in October 1962 with the support of the Ford Foundation a two-year secondment.⁹⁸ Ford had just launched its dedicated programme for programme for the Staffing of African Institutions of Legal Education and Research

⁹³ See E Ashby, *Universities: British, Indian, African. A Study in the Ecology of Higher Education* (London, Weidenfeld and Nicolson 1966) 329.

⁹⁴ F Agbodeka, *A History of the University of Ghana: Half a Century of Higher Education 1948-1998* (Accra, Noeli Publishing Services, 1998) 210.

⁹⁵ WC Ekow Daniels, 'The Birth of Legal Education in Ghana', University of Ghana Faculty of Law, *50th Anniversary Celebrations – Grand Durbar*, 20th April 2009 [copy on file with authors].

⁹⁶ Unlike in other departments, there is no evidence to suggest that the latter group of staff came to Ghana for specifically for political reasons, see AA Kwapong, *A Life in Education: A Memoir* (Legon-Accra, Sub-Saharan Publishers 2016) 144.

⁹⁷ DH Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 234.

⁹⁸ See JK Krishnan, 'Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957- 1977', *52 American Journal of Legal History* 261-324, 301-303.

(SAILER) which was to contribute to developing law schools across the continent over the next decade. A contract lawyer and legal theorist, Harvey was professor of law at the University of Michigan. With him came Robert Seidman, a Harvard graduate, who took up a senior lectureship also with Ford support. From the start Harvey pursued a vigorous programme of reform and expansion in law at Legon. He achieved faculty status for the department, helped found a university law journal and began the move to dedicated premises. He also had clear ideas about the ideal scope and form of legal education, informed above all by his career in the United States which we will explore in detail later.⁹⁹

Ironically, while Harvey's innovations were seen as revolutionary by local practitioners associated with the opposition, his American origins also made him suspect in the eyes of government ministers and CPP activists, especially as he took Vice-Chancellor Cruise O'Brien's side in defending university self-government.¹⁰⁰ In a sign of the government's growing insecurity he was accused by party newspapers of being involved in the assassination attempt of January 1963. They claimed that 'the so-called Michigan professor from Legon', had been inexplicably standing behind Nkrumah when there was an attempt on his life by a body guard, leading them to infer complicity on his part.¹⁰¹ He was also charged with supporting the racist South African government on the basis of his inaugural professorial lecture of May 1963. A dry and

⁹⁹ D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 234.

¹⁰⁰ The union of radical and conservative opponents is noted in C Cruise O'Brien, Letter to WB Harvey, 1st July 1965, UCD Archives, P82/99.

¹⁰¹ D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 236.

fairly brief discussion of the peculiarities of the Roman-Dutch legal system was interpreted by CPP supporters in the press as endorsement of apartheid.¹⁰²

Cruise O'Brien was unsuccessful in his attempt to reassure Nkrumah personally that the accusations against Harvey were unfounded. On the contrary government outlets went on the offensive, emphasizing the need for the law faculty and indeed the legal profession to align themselves with national objectives as defined by the party. As it was put in Accra's *Evening News*,

you need socialist lawyers to draft, interpret, administer [socialist laws] ... above all, don't let anyone who is not a socialist teach the lawyer who will have to practice law in a socialist country.¹⁰³

The President himself sanctioned this line of attack in a speech at the opening of the University's Institute of African Studies in October 1963 where he affirmed that 'the Law Faculty should be staffed by Africans'.¹⁰⁴ Some months later demonstrators loyal to the government marched on to campus taunting students and demanding the Africanization of staff and teaching methods.¹⁰⁵ The crisis culminated in the deportation of Harvey and Seidman, along with a further five expatriate teachers from other faculties on 8th February 1964.

¹⁰² WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, p.313.

¹⁰³ Quoted in D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 235.

¹⁰⁴ Quoted in D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 238.

¹⁰⁵ WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, p.333.

The contest between academic freedom on the one hand and promotion of social relevance on the other cannot simply be mapped on to the differences between expatriate and African staff. In fact many Ghanaian academics were critical of government interference in the running of the university.¹⁰⁶ Equally expatriates, including Harvey and Seidman, acknowledged the importance of law and other disciplines contributing to national development and the need to Africanize the cohort of lecturers and professors.¹⁰⁷ Both of these groups were united, however, in giving priority to academic autonomy as regards appointments and curriculum design and in determining the university's relations with the wider society. Moreover they held this commitment irrespective of their affection (or lack of it) for the Oxbridge forms adopted for the University by first Vice-Chancellor Balme.

VII 'The Need for a Degree': A Dispute over Legal Education

It is most likely that all of the charges against Harvey were concocted by party activists. But there were substantive issues in dispute too.¹⁰⁸ At bottom these concerned the appropriate institutions for training legal professionals in Ghana, the relations between them, and the style of teaching which each would adopt. Thus, in 1957, at the instigation of Geoffrey Bing, the government moved to establish a centre for training lawyers which would eliminate the necessity for Ghanaians to travel to London to study

¹⁰⁶ D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 219, 231.

¹⁰⁷ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 371; R Seidman, Letter from a Deportee (n.d.), UCD Archives, P82/121.

¹⁰⁸ See D Akenson, *Conor. A Biography of Conor Cruise O'Brien* (Ithaca [NY], Cornell University Press 1994) 234.

at the Inns of Court.¹⁰⁹ The Ghana Law School (GLS) opened in 1958 was located in the heart of the commercial district of central Accra, near to the main courts, a setting which contrasted with that of the University Law Department located in its (then) rural setting on Legon Hill. Though founded in the same year, there was no formal connection between the two. The GLS was subject to the direct control of the General Legal Council which regulated admission to the legal profession. It was only in his capacity as Director of Legal Education on the Council, and not as Dean of Law at the University, that JHA Lang served as first head of the GLS.

It was planned that the GLS would offer a one-year practical course for law graduates. But its main task was to prepare students for Parts i and ii of the English Bar Examination through evening classes. Students would be eligible to practice law in Ghana on completing a compressed syllabus over the course of a three-year diploma programme. By contrast the University law degree entailed four years full-time study of traditional common law subjects, as well as African customary law and one non-law elective. Entry requirements were similarly divergent. The University demanded passes in the national school leaving examinations, while the GLS accepted a range of qualifications, from bachelors degrees to commercial courses in accounting. Poor student completion rates in the School seemed to reflect this generous admissions policy. Three reasons have been given as to why Bing favoured the idea of a separate Law School, notwithstanding the risk of duplicating the work being done in founding a Law Department at the University.¹¹⁰ First, Ghana required a large number of legally

¹⁰⁹ The discussion in this and the following paragraph draws on Harvey's memorandum 'Legal Education in Ghana' presented on behalf of the Faculty of Law to the Academic Board of the University of Ghana in November 1962 and reprinted in WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369-389.

¹¹⁰ WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, p.260.

qualified personnel to be trained quickly in order to play a part in development. Second, many able and interested candidates were dissuaded from studying law by the cost of travelling to the Inns of Court. Third, a new cadre of domestically trained lawyers from a wider social base would serve to dilute existing British-trained Bar and thus diminish Nkrumah's political opponents.¹¹¹

The unclear relationship between the GLS and the University Law Department was considered by an International Advisory Board on Legal Education in July 1959, whose members included Arthur Sutherland (US), Zelman Cowen (Australia) and LCB Gower (UK). Submissions reflected the quite opposed conceptions of lawyering at play in Ghana at the time. On the one hand the Bar Association argued that Roman Law be made a compulsory subject in the first year of the University law course; a plea which was politely declined.¹¹² On the other hand Bing, who had convened the committee, again asserted the need to ensure an adequate and rapid supply of lawyers for the new state. The Advisory Board held firm on this too, countering that it was 'of the highest importance [to] any community that its lawyers should be persons of a wide and liberal understanding' and that such an education could only be attained through studying for a university law degree.¹¹³ In this spirit they recommended that Ghana's bifurcated system of legal training come to an end. The GLS should be absorbed into

¹¹¹ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 179. Another of Nkrumah's advisors recalled a similar desire to outflank the conservative elite as being behind the creation of a teachers' college in the Cape Coast region: R Makonnen, *Pan-Africanism from Within* (Nairobi, Oxford University Press 1973) 205.

¹¹² Report of the International Advisory Committee on Legal Education, Accra (n.d.), p.12 [copy on file with authors].

¹¹³ Report of the International Advisory Committee on Legal Education, Accra (n.d.), pp.4-5 [copy on file with authors].

University, the part-time diploma phased out, and its efforts focussed on post-graduate training for legal practice.¹¹⁴

These recommendations had not yet been implemented when William Burnett Harvey took up the Deanship at Legon. He addressed the issue of the GLS in a memorandum submitted to the Academic Board of the University and the General Legal Council in October 1962 only a month after his arrival.¹¹⁵ Going one step further than the Advisory Board, he proposed that the GLS be abolished completely and with it the provision of separate vocational training in legal practice. The latter could, he argued, be delivered more efficiently, by the University Law Department itself, as was the case in the US. To achieve this, students would take a three year BA course, followed by two years of LL.B. studies to entitle them to practice. This would have the benefit of improving the quality of teaching and, thus, of graduates and practitioners. It would also concentrate national research capacity in law. Ultimately, though accepted by the General Legal Council, Harvey's proposals did not survive his deportation in 1964. Moreover they provoked significant opposition, as we will see in subsequent sections. Before that we turn to investigate more fully the rival conceptions of legal education, its nature and purpose, which underpinned the different positions in this debate.

¹¹⁴ Report of the International Advisory Committee on Legal Education, Accra (n.d.), pp.6-7 [copy on file with authors].

¹¹⁵ An Integrated Programme for Legal Education in Ghana, Accra, 1962, reprinted in WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369-389.

VII 'How the World Might be Improved': Bing's Instrumentalism

Geoffrey Bing's memoirs, published after his expulsion in 1966, include a chapter of historically and theoretically well-informed reflections on education in Ghana. Examining this, along with views expressed by Nkrumah himself, will provide us with an insight into the distinctive aims and values which each felt should shape legal training in a post-colonial state. Bing adopted Sir Eric Ashby's critique of the 'Asquith doctrine', noted above, but gave it a more political, indeed anti-colonial edge. Asquith's elite (or 'Platonic') model of university education, he argued, was rooted in imperial strategies of domination, exemplified, for example, in the criteria laid down by Cecil Rhodes for scholarships awarded in his name to students coming to Oxford.¹¹⁶ Privileging classicists and historians as candidates for administrative and political leadership in Britain and the colonies, the model aimed to teach 'men how to rule men', not 'how the world might be improved'.¹¹⁷

For his part, Bing took a more instrumental and democratic view, one rooted in the ethos of the natural sciences prevalent at mid-century. Education, he wrote,

consists of passing on and augmenting the knowledge which enables man to conquer his environment. The student's mind must be so trained that he [sic] will for ever after question, in accordance with scientific principles, the world in which he lives. In short, education is the art of learning how to interrogate nature.¹¹⁸

¹¹⁶ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 345.

¹¹⁷ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 341. This was also Nkrumah's view, see B Davidson, *Black Star: A View of the Life and Times of Kwame Nkrumah* (London: Allen Lane, 1973) 163.

¹¹⁸ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon and Kee 1968) 340.

This generalized instrumentalism was given concrete substance in independent Ghana by the government's developmental ambitions, and it was in these specific terms that Bing recounted and evaluated the relationship between Nkrumah's government and the University at Legon. He dismissed the sequence of on-campus demonstrations and deportations as no more than the 'sordid brawling between "town" and "gown"' typical of medieval Cambridge. Rather the true 'crime of the University was its passivity in face of the crying economic and social needs of the country' and its failure 'to provide the skilled personnel necessary for development.'¹¹⁹ The banner of academic freedom, raised against Nkrumah by Conor Cruise O'Brien and his colleagues, as well as by international critics, in reality served to protect the corporate and material interests of disproportionately well-paid expatriates and the entrenched class position of established Ghanaian elites.¹²⁰

A better, more development-focussed model for Ghana, and other African states, according to Bing, lay in the Land Grant Colleges established in the United States in second half of the 19th century.¹²¹ Governed by a committee drawn from the surrounding community, rather than by academics themselves, these colleges were explicitly founded to promote economic and social progress in their own regions.¹²² Courses of varying length focussed therefore on practical training, oriented to the needs of local industries, including agriculture. This approach was widely discussed

¹¹⁹ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 364.

¹²⁰ Regarding the former he mentions the defence, in terms of intellectual autonomy, of holiday leave allowances including first class air fares. The latter accounted for 1/9 of the annual university budget: G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 360.

¹²¹ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 340. See further, ED Ross, 'On Writing the History of Land Grant Colleges and Universities' (1953) 24 *Journal of Higher Education* 411-414, 451-452.

¹²² See E Ashby and M Anderson, *Universities: British, Indian, African. A Study in the Ecology of Higher Education* (London, Weidenfeld and Nicholson 1966) 276-281.

elsewhere in Africa during the period of decolonization, most notably by Dr Nnamdi Azikiwe in Nigeria who adopted it as the model for the University of Nigeria at Nsukka founded in 1955. More democratic and more oriented to social problems, according to Ashby the Land Grant college was concerned 'with the making of citizens, not just leaders ... its campus [was] the whole state'.¹²³

Nkrumah and Bing's interventions on legal education were also marked by a steady focus on the collective, articulated in instrumentalist terms. They expressed impatience with the deficiencies of inherited laws and forms of legal practice. Bing argued that through its 'inefficiency, slowness and uncertainty' colonial legislation was 'a clog on industrialization and an invisible surcharge on every commercial transaction'.¹²⁴ According to the President, practitioners, for their part, had concentrated on conducting litigation 'between wealthy individuals', neglecting less lucrative disputes and effectively promoting 'colonial economic interests'.¹²⁵ This group understood law in absolute terms, as an end in itself, operating above all in defence private property and the established order. By contrast, in an independent Ghana law would be deployed dynamically for transformation and growth. For Nkrumah 'law must represent the will of the people and be so designed and administered as to forward the social purpose of the state', a view warranted by the essential communitarianism of historic African societies.¹²⁶

¹²³ See E Ashby and M Anderson, *Universities: British, Indian, African. A Study in the Ecology of Higher Education* (London, Weidenfeld and Nicholson 1966) 279.

¹²⁴ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 330.

¹²⁵ K Nkrumah, 'Law in Africa' (1962) 6 *Journal of African Law* 103-112, 107.

¹²⁶ K Nkrumah, 'Law in Africa' (1962) 6 *Journal of African Law* 103-112, 103.

Legal education in the new Ghana would be reshaped to serve this end. Not litigators but 'legally trained administrators and legal technicians' were required for development through socialist planning.¹²⁷ The re-orientation of practice toward external goals meant that the curriculum should include non-law subjects such as economic, social and political science, and even science and technology, in addition to standard law courses. This vision of the new lawyer as technocrat was complemented by a more populist concern with the needs of 'the ordinary man and woman' in small towns and villages whose 'everyday legal problems' had been neglected by elite litigators.¹²⁸ An expanded cadre of formally admitted practitioners and paralegals was required to provide them with 'inexpensive and good advice' and to defend them against 'wealthy trading and commercial firms'.¹²⁹ Through the GLS, civil servants, police and army personnel, for example, would be able to gain the legal knowledge necessary for the more effective discharge of their public duties. Equally its lower cost would attract into the profession 'those whose families lacked the money to send them to London to read law'.¹³⁰ So-called 'legal letter writers', operating as informal advisors in the countryside would be offered instruction 'in the rudiments of law' as a condition for being formally licensed. Significantly these initiatives were resisted in the name of maintaining standards. The GLS curriculum, as we have seen was pegged to the Bar course in London, and its quest for the authority to train lawyers from scratch was thwarted. The 'letter writers' proposal was also rejected by the General Legal Council, as a 'colonialist suggestion' that Ghanaians could not aspire to the same quality of legal education as that prevailing in England. Bing, in response, castigated this defence of absolute

¹²⁷ K Nkrumah, 'Law in Africa' (1962) 6 *Journal of African Law* 103-112, 103, 107.

¹²⁸ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 316.

¹²⁹ K Nkrumah, 'Law in Africa' (1962) 6 *Journal of African Law* 103-112, 107.

¹³⁰ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 318.

standards, as illustrating 'in miniature the internal struggle between the elite and the mass of the people'.¹³¹

IX 'A Learned Profession': Harvey's Humanism

In taking steps to ensure a widening of legal education suited to Ghanaian conditions, Bing and Nkrumah were opposed by the WB Harvey. Admittedly he acknowledged like them that the law department faced the challenge of promoting Ghanaian staff and he shared their concern that the University Law Faculty should not isolate itself from the wider society.¹³² In form and substance, however, his vision differed from theirs quite sharply. Harvey arrived at Legon 'carrying the torch for American legal enlightenment', as it was put by SKB Asante, the acting Dean before his arrival.¹³³ Like Bing he started with a critical view of the legal profession as it then was: numerically small, over-concentrated geographically and skewed towards advocacy. He too argued that the new curriculum should include non-law courses to alert the lawyer to 'the pressures and needs felt at the growing edge of ... society'.¹³⁴ But these concessions did not amount to an acceptance of Bing's assumption that law was merely a tool of national development subject to government direction. On the contrary, Harvey emphasized first and foremost that

¹³¹ G Bing, *Reap the Whirlwind. An Account of Kwame Nkrumah's Ghana from 1950-1966* (London, MacGibbon & Kee 1968) 318.

¹³² WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 178.

¹³³ SKB Asante, interview, 8th October 2018.

¹³⁴ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369.

law is a learned profession [and the lawyer] who is faithful to the highest standards of his profession is not merely a skilled craftsman manipulating a technique for social ordering.¹³⁵

Lawyers required a 'broad and liberal education' rendering them sensitive to 'the values of the cultural tradition of which they are a part' through 'substantial exposure to the learning of the humanities and the social sciences'.¹³⁶ Acquiring familiarity with 'the body of positive legal norms' was not enough.¹³⁷ Echoing the Asquith report, as well as former Vice-Chancellor David Balme and the opponents of Bing's proposals for training 'legal letter writers', he evoked the 'gold standard'. Ghana should concentrate on producing 'soundly and liberally educated' lawyers entitled 'to full acceptance in the international community'.¹³⁸

Harvey robustly defended the inherent academic value of the academic law degree. In its core subjects, as much as through non-law electives, it offered a 'rich storehouse of data of general humanistic and social significance'.¹³⁹ Law was a worthy subject of study even by those who would not go on to practice. The law of contract provided an insight into the workings of the market economy, tort law into the costs of industrialization, and so on. This potential was sold short by the abbreviated training offered at institutions like the GLS which he dismissed as "crash programs" for the training of minimally qualified legal technicians'.¹⁴⁰ If national resources were scarce

¹³⁵ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369.

¹³⁶ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369.

¹³⁷ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 369.

¹³⁸ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 370.

¹³⁹ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966) 370.

¹⁴⁰ WB Harvey, *Law and Social Change in Ghana* (Princeton [NJ], Princeton University Press 1966)

they should be devoted to providing standard law degrees to a high standard, rather than to supplementary and inevitably mediocre law teaching aimed at public servants and the like. The practical corollary of this view for Harvey, as we have seen, was that legal education should be solely delivered by the University as in the United States.

This humanistic, as opposed to purely instrumentalist conception of legal education was also evident in how Harvey, and his colleague Robert Seidman represented their teaching practice. Trained at Michigan and Yale law schools respectively, both followed the Socratic, or dialogic method of teaching. Famously, this inducted students into the practice of common law reasoning by a rigorous and open-ended questioning on the detail of important cases, through which they were expected to grasp the principles of a given legal area. The function of the law teacher in this mode was 'to organize an apt body of working materials, to stimulate the student to consider them in such a way as to sharpen his [sic] own analytical skills and insights, and by his questions and criticisms to light the student's path toward discovery, but not to carry him along it'.¹⁴¹ As regards teaching materials, this approach privileges casebooks, containing extracts from primary legal sources, rather than straight-forwardly descriptive textbooks, and American staff at Legon were active producing such casebooks for their courses, containing specifically Ghanaian and other African materials.¹⁴² Historically associated with Harvard Law School, the Socratic method was quite opposed to the magisterial style common in British law faculties and among Ghanaian colleagues who had studied there. On that model, according to Harvey, legal information was imparted

370.

¹⁴¹ WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, p.286.

¹⁴² The fruits of this effort are recorded in WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, p.281.

in unidirectional fashion through lectures which students attended ‘without prior preparation on the materials to be considered ... quietly taking their notes’.¹⁴³ This ultimately rested on a view of law, not as activity, but as a body of rules and principles in the first instance.

This difference in teaching methods had a clear political valency for Seidman. While the American professor’s role was ‘to guide students to discover for themselves underlying patterns of law’, their European counterparts used ‘a heavily didactic, authoritarian instructional method’.¹⁴⁴ Small wonder that the President, himself seen as an incipient autocrat, ‘objected to the way Americans taught “Western law”’, or that proponents of the traditional lecturing style in the University had also sought to introduce compulsory courses for students in the party doctrine of ‘Nkrumahism’.¹⁴⁵ The popularity and inherent democratic potential in the Socratic method was borne out for Seidman in the very week of his expulsion in January 1964. He recalled with pride a criminal law class from that period which saw students tease out the implications of the common law doctrine of provocation with reference to a Ghanaian defendant poised between ‘rational understanding’ and ‘traditional beliefs’. His own departure from Accra airport was attended by most staff from the Law Faculty and a large body of obviously distressed, but supportive students. Even in his absence, he was sure that their acquired skill in Socratic techniques would allow them to run their own classes for a number of weeks.¹⁴⁶ Harvey too expected that students who had been

¹⁴³ WB Harvey, ‘Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation’ (n.d.), Indiana Archives, p.285.

¹⁴⁴ R Seidman, Letter from a Deportee (n.d.), UCD Archives, P82/121.

¹⁴⁵ R Seidman, Letter from a Deportee (n.d.), UCD Archives, P82/121.

¹⁴⁶ R Seidman, Letter from a Deportee (n.d.), UCD Archives, P82/121.

‘encouraged to question, to criticize and to attempt to defend their own analyses [would] never again be content with passive note-taking on lectures’.¹⁴⁷

X ‘Indebted to England’: Conservatives and Nationalists

Legal conservatism, in teaching and practice, was attacked in the name of Ghanaian development by Bing, and by Harvey and Seidman. In both cases the British origin of these traditions was explicitly disparaged. Harvey traced the tendency towards rote learning and regurgitation among his students to the imposition of the British school system in Ghana, one of the most the ‘most regrettable aspects’ of the colonial legacy.¹⁴⁸ Against this he hoped that ‘even after the direct American involvement in law teaching has ended, the American insistence that rule-learning through neat lectures is not legal education will still influence the Faculty of Law’.¹⁴⁹ Bing, as we have seen, turned to the US for alternatives to hidebound British practices too, though in his case it was the Land Grant Colleges, rather than Harvard Law School, that provided the model to be emulated.

Nonetheless the British connection continued to be highly valued by many Ghanaian scholars and legal practitioners. Thus in 1960, addressing the University of Hull, Mr

¹⁴⁷ WB Harvey, ‘Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation’ (n.d.), Indiana Archives, p.287. One notable graduate of this period, Professor Samuel Date-Bah, has attested to the enduring influence of Harvey and Seidman’s methods on his illustrious judicial and academic career, while noting that traditional lecturing had its uses in legislation-based subjects like company law: SK Date-Bah, interview, 10th October 2018.

¹⁴⁸ WB Harvey, ‘Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation’ (n.d.), Indiana Archive, p.284.

¹⁴⁹ WB Harvey, ‘Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation’ (n.d.), Indiana Archive, p.287.

Justice NA Ollennu, then a judge of the Ghanaian High Court and sometime lecturer at Legon, affirmed that

Our courts are presided over by, and before them practise, men with the same academic and professional training and integrity as those of the English courts.... [N]ot only are we indebted to England for that part of our law which we have received from England, but also, and much more significantly, we are indebted to you for giving us the heritage of your own methods of creating, declaring, and developing the law.¹⁵⁰

Indeed, lawyers' resistance to Nkrumah was represented at the time by SKB Asante as the result of 'solid attitudes instilled by a hundred years of contact [which meant that] the essential ingredients of the English concept of the rule of law were sufficiently rooted in Ghanaian public life to generate a revulsion against wanton totalitarianism.'¹⁵¹ In the University too, even though the formal link to the University of London was abandoned in 1960, a more informal shadowing of the gold standard was achieved through the appointment of British, or British-trained external examiners for its law programmes.¹⁵² Even the Ghana Law School, which was founded to outflank the conservative, Anglophile legal profession, was concerned to show it would maintain parity with English standards at least in its early years, through setting the same examination papers as the Council of Legal Education in England.¹⁵³

¹⁵⁰ NA Ollennu, 'The Influence of English Law on West Africa' (1961) 5 *Journal of African Law* 21-25, 35. On Ollennu's political interventions, see D Austin, *Politics in Ghana 1946-1960* (Oxford, Oxford University Press 1964) 103, 139.

¹⁵¹ SKB Asante 'Law and Society in Ghana', *Wisconsin Law Review* 1113-1124 (1966).

¹⁵² SKB Asante, 'Recollection of the History of the Law Faculty at Legon: The Turbulent Early Years' in University of Ghana Faculty of Law, *50th Anniversary Celebrations – Grand Durbar*, 20th April 2009 [copy on file with authors].

¹⁵³ 'Law School Opens', *New Ghana*, 19th November 1958.

In the specific context of law, then, British standards and traditions were widely associated with the rule of law and the defence of liberty. This affinity formed part of a broader pattern among the educated elite which emerged in the Gold Coast in the post war period. The memoirs of Alex Kwapong, who succeeded Cruise O'Brien as Vice-Chancellor at Legon make this clear.¹⁵⁴ Taught by mostly British staff at Achimota School, he took undergraduate and postgraduate degrees in classics at Cambridge. Extensive personal connections to Britain and a shared scholarly culture, were matched in his case by a determination in the aftermath the 1966 coup, that the University at Legon, itself shaped by the Oxbridge model, should endure as a 'microcosm of the national freedom of Ghana'.¹⁵⁵

The defence of legal Englishness was not limited to established professionals and political conservatives, however. WC Ekow Daniels, who had joined the Faculty having returned from doctoral studies at University College London, was strongly identified with President Nkrumah. Like Bing he was accused of off-stage plotting to subvert the autonomy of the University in the name of Africanizing the lecturing staff. Indeed, Cruise O'Brien, Harvey and Seidman all asserted privately that he was instrumental in having the latter two deported in order to secure a chair in law for himself.¹⁵⁶ Ekow Daniels strenuously denied this at the time and since.¹⁵⁷ What is indisputable is that

¹⁵⁴ AA Kwapong, *A Life in Education: A Memoir* (Legon-Accra, Sub-Saharan Publishers 2016).

¹⁵⁵ See 'The Vice-Chancellor's Address to Congregation, 26th March 1966' reproduced in AA Kwapong, *A Life in Education: A Memoir* (Legon-Accra, Sub-Saharan Publishers 2016) 326-342, 341.

¹⁵⁶ C Cruise O'Brien, Letter to Alan Nunn May, 24th February 1964, UCD Archives P82/99; WB Harvey, 'Legal Education in Ghana. A Report to the SAILER Programme of the Institute of International Education and the Ford Foundation' (n.d.), Indiana Archives, pp.289, 306; R Seidman, Letter of a Deportee (n.d.), UCD Archives P82/121.

¹⁵⁷ Libel proceedings arising out of a piece that Cruise O'Brien had written to this effect were settled in 1969 with an apology. See respectively C Cruise O'Brien, 'Return to Ghana', *The Observer*, 24th April 1966 and relevant litigation Papers [on file with Professor WC Ekow Daniels].

he openly challenged Harvey's proposed reforms to the organization and format of law teaching in Ghana with a memorandum of his own to Faculty staff in late 1962.¹⁵⁸ This was made out in terms of a defence of the English form of legal education that he had experienced as an undergraduate, ie. a separation of academic study, to be delivered at the University, from vocational instruction, to be provided through a separate institution, like the GLS. He argued that Harvey's typically American proposal to deliver the entirety of legal education through a university degree programme confounded theory and practice. Its brevity and its combination of law and non-law courses would leave students underprepared for professional work. Casting Harvey's ambition to overcome British traditions as a kind of legal educational 'imperialism', he proposed instead that students take a diet of solely legal subjects, with no room for extra economics, social studies and so on.¹⁵⁹ Contextual and critical perspectives on law were, thus, more likely to be offered to students by American staff, than by their British-trained Ghanaian colleagues, no matter how radical their politics.¹⁶⁰ Over year after the deportations Cruise O'Brien remarked sarcastically that

Faculty members are pressing at the moment for the dismantling of the course set up by Burnett Harvey and the wish to return to the good old British system under the banner of anti-colonialism is very marked.¹⁶¹

A further irony is evident when we consider the views of LCB Gower, then chair of law at the London School of Economics and founder of academic company law in England,

¹⁵⁸ WC Ekow Daniels, 'Some Comments on Professor Harvey's Memorandum on the Future of Legal Education in Ghana' (n.d.) [copy on file with authors].

¹⁵⁹ WC Ekow Daniels, interview, 10th October 2018.

¹⁶⁰ Even SKB Asante, who was considerably more critical of Nkrumah and supportive of Harvey and Seidman than Ekow Daniels, felt that the Americans were 'over-confident' in seeking to impose a 'romanticized' US conception of legal education 'against English tradition' in Ghana: SKB Asante, interview, 8th October 2018.

¹⁶¹ C Cruise O'Brien, Letter to R Seidman, 1st July 1965, UCD Archive P82/99.

who was highly active in law reform and development of law faculties across West Africa in this period.¹⁶² As we have seen, he served on the International Advisory Committee on Legal Education in Ghana and also on the influential Denning Committee which reported on the reform of training at the Inns of Court in London for African students and on the development of law schools in Africa in 1960.¹⁶³ Gower was no missionary for the traditional English model, however. He had long-established contacts with leading US scholars of corporate law and had been a visiting professor at Harvard in 1954-55.¹⁶⁴ Like many British academics who made this journey at the time, he was greatly impressed by the breadth and vigour of American legal scholarship and equally convinced of the inferiority of its counterpart at home.¹⁶⁵ He brought this awareness with him to his work in and on Ghana, arguing repeatedly for the value of a university law degree as a prerequisite of professional practice.

Gower dedicated his Oliver Wendell Holmes lectures at Harvard in 1966 to the theme of 'Independent Africa', starting from the assumption that well trained lawyers, 'with a lively appreciation of the needs of tomorrow' were essential to political order and economic development.¹⁶⁶ He reviewed the 'colonial inheritance' in this regard. Positives included the rule of law, policing, an apolitical military and the common law itself. Foremost among the negatives were the education system, which was elitist at

¹⁶² Most notable in Ghana was Gower's work on company law reform, see Final Report of the Commission of Enquiry into the Working and Administration of the Present Company Law of Ghana (Accra, Government of Ghana 1961) 2.

¹⁶³ Edited for anonymity

¹⁶⁴ Gower's American connections are carefully mapped in D Sugarman 'A Special Relationship? American Influences on English Legal Education, c. 1870-1965', (2011) 18(1-2) *International Journal of the Legal Profession* 7-57, 23-25.

¹⁶⁵ For an early statement, see LCB Gower, 'English Legal Training a Critical Survey', (1950) 13 *Modern Law Review* 137-205.

¹⁶⁶ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 144, 107.

the highest level and simply insufficient at the lower levels.¹⁶⁷ Training at the Bar in London fell short in the same way. While recommending that Britain and US should address these deficiencies ‘in combination’ rather than competition, Gower clearly cast his American peers as the agents of progress.¹⁶⁸ He counselled due modesty, warning against ‘dollar imperialism’, over zealousness and the naïve assumption that Africans saw the US as a ‘loveable’ ally with shared anti-colonial past. Allowing for that, however, what was required above all was for ‘more for more African lawyers to be exposed to American methods at American law schools, and more American teachers to practise American methods at African law schools’.¹⁶⁹ Not only African lawyers, but their British counterparts needed to be shaken ‘out of complacency’.¹⁷⁰ The final lines of his lectures are telling. Recalling a friendly comment from his year at Harvard to the effect that he ‘wasn’t a typical Englishman’, he added ‘I wouldn’t know about that. But I think too many African lawyers are’.¹⁷¹

XI Conclusion

Legal education, neglected and discouraged under colonial rule, received much attention after independence but there were often conflicting outlooks on how it should be provided and its aims. In this paper we have shown that from 1957,

¹⁶⁷ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 34, 13.

¹⁶⁸ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 134.

¹⁶⁹ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 144.

¹⁷⁰ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 145.

¹⁷¹ LCB Gower, *Independent Africa. The Challenge to the Legal Profession* (Cambridge [Ma], Harvard University Press 1967) 145.

debates about the roles of the Law Department at the University of Ghana and the Ghana Law School must be understood as part of wider, complex struggles. At stake were the political positions of the main protagonists and competing philosophies of legal education whilst the broader historical context was one of decolonization. We have sought to show that struggles over legal education had a significance far beyond the Law Faculty. They were as much about African nationalism, development and social progress, the impact of British rule on legal education and the growing involvement of the United States in this domain. There was no straight alignment of perspective with national origin however.

As equivalent experience in East Africa has shown, contact with American innovations in teaching and scholarship was invigorating for young British scholars. That it was experienced in the relatively open context of new African law schools must have added to its purchase.¹⁷² Many returned from their expatriate sojourns to challenge 'blackletter' orthodoxy with a new current of 'law in context' scholarship which owed much to American legal realism, but also to the developmental challenge set by African nationalist leaders to academics in the new law faculties.¹⁷³ Indeed developments in law and other faculties most notably at the University of Dar es Salaam in the latter half of the 1960s suggest a fourth model of education, socialist and anti-imperialist, to add to the three which we saw at play in Ghana earlier in the decade, ie, instrumental, traditional and

¹⁷² See for example, GM Fimbo (ed.) *Fifty Years of Legal Education in Tanzania* (Dar es Salaam, University of Dar es Salaam Press 2011).

¹⁷³ For a selection of memoirs of this time, see W Twining, 'McAuslan in Context. Early days in Dar and Warwick', in T Zartaloudis (ed), *Land Law and Urban Policy in Context. Essays in Honour of Patrick McAuslan* (London, Routledge 2016) 35-55; and the essays collected in I Shivji, (ed.) *The Limits of Legal Radicalism* (Dar es Salaam, University Faculty of Law 1986).

humanistic.¹⁷⁴ There, many expatriate teachers learned from their students, who evoked the downfall of Nkrumah as one justification for an increasingly radical challenge to the inherited disciplinary system and its conservative political effects.¹⁷⁵ Interdisciplinarity and a common foundational curriculum was proposed as means of exposing the enduring domination of new African states in sectors such as law and the economy.¹⁷⁶ It important to note, however, that this fourth model had not yet emerged in Ghana in the earlier period under discussion here.

As regards the shape of legal education in Ghana it must be admitted that in the medium- and long-term both Harvey and Bing failed in their ambitions. The bid to create a university monopoly of legal training was thwarted by Harvey's deportation in 1964. The bid to by-pass the university by allowing non-graduates to practice after studying at the Ghana Law School was frustrated by Bing's own expulsion after the coup against Nkrumah in 1966. Our discussion shows that neither proposal was supported by a sufficiently numerous and influential domestic constituency.¹⁷⁷ Ultimately the mixed English model, as supported by the International Advisory Committee was retained. In the aftermath of the 1966 coup the university council declared its intention to return Ghana 'to the academic gold standard', and this development was a noted ambition of the conspirators themselves.¹⁷⁸ In that period too, the University Law Faculty developed a

¹⁷⁴ See JL Kanywani, 'The Struggles to Decolonise and Demystify University Education: Dar's 25 Years Experience Focussed on the Faculty of Law (October 1961-October 1986)' (1989) 16 *Eastern Africa Law Review* 1-70.

¹⁷⁵ K Hirji, *Cheche. Reminiscences of a Radical Magazine* (Dar es Salaam, Mkuki na Nyota 2010) 144-147.

¹⁷⁶ S Picciotto, 'Law, Life and Politics', in I Shivji (ed), *Limits of Legal Radicalism* (Dar es Salaam, University Faculty of Law 1986) 36-47.

¹⁷⁷ SKB Asante, interview, 8th October 2018.

¹⁷⁸ D Austin, *Ghana Observed. Essays on the Politics of a West African Republic* (Manchester, Manchester University Press 1976) 176.

significant partnership with its equivalent at the University of Oxford.¹⁷⁹ This saw staff from the latter, most notably AWB Simpson, seconded to Legon while Ghanaian graduates travelled in the other direction for postgraduate and postdoctoral work.

We have already noted the irony in this. Britain was exhausted as a world power by the early 1960s. The ruling class had lost an empire, and its ruling ideas had lost purchase, most of all with the ambitious children of its own working and lower middle classes. The veneration of tradition, complemented by an empiricist anti-intellectualism, which marked both the common law and the wider culture, was being challenged by imported continental and American models of thought and pedagogy.¹⁸⁰ In some former colonies, by contrast, the 'peculiarities of the English' retained a certain purchase in debates over the future of law and legal education. The metaphor of the 'gold standard', repeatedly invoked, suggests a certain nostalgia for the days when money and qualifications had an intrinsic worth underwritten by the imperial metropole. Dollar convertibility had fewer attractions. National money threatened inflation and a loss of value. It would be erroneous, however, to see this as mere imitation or simple neo-colonial deference. Well founded strategic concerns, about US intentions in Africa for example, as well as the tactical demands of the political moment within Ghana, meant that the English model had value even for radical nationalists. We do well too to remind ourselves that the Anglophile lawyer-elite in Accra, like its conservative peers in other former colonies, was no less committed to independence and development than their

¹⁷⁹ AA Kwabong, *A Life in Education: A Memoir* (Legon-Accra, Sub-Saharan Publishers 2016) 183-185.

¹⁸⁰ See generally, P Anderson, 'Components of the National Culture' (1968) 1/50 *New Left Review* 3-57; and on law, AWB Simpson, 'The Common Law and Legal Theory', in AWB Simpson, *Legal Theory and Legal History. Essays on the Common Law* (London, Hambledon Press 1987) 359-382.

radical rivals, albeit with more caution. Finally, it is worth noting that many teachers and students positively embraced the plurality of teaching styles and scholarly orientations on offer at Legon in this period. They rallied in support of deported US lecturers, and in protest against Nkrumah's constraints on the judiciary. British and American methods were appropriated, adapted and in-part rejected for differing disciplinary contexts by distinguished Ghanaian scholars and judges over the following decades.¹⁸¹

¹⁸¹ SKB Asante, interview, 8th October 2018; S Date-Bah, interview, 10th October 2018.