

SOME PROBLEMS ASSOCIATED WITH A LANGUAGE SWITCH-OVER IN THE THIRD WORLD

M. L. MARASINGHE

One of the more effective ways by which a nation's culture, a way of life, its goals and aspirations may be changed and re-moulded is through a language and a system of social values expressed through the law. Law expresses itself through a language¹ and, therefore, the language of the law has the greatest influence upon a nation. This paper is designed to show: First the effect of the colonial culture on the colonial legal language upon colonial dependencies. Second, the role of language in the emergence of the New Elite as an end product of the de-colonization process. Third, the effect of legal language switch-overs. And finally, the question as to whether there is a need for a new law for a new legal language will be raised.

A. The Colonial Problem and the Role of Language

It is generally accepted that colonization is not a normal or necessary stage in the evolution of human societies. It is in many ways an abnormal stage and it is, therefore, sometimes difficult to sustain. It is a condition imposed upon one nation by another who may command a preponderance of power over the colonized nation. This power may appear in several forms. It may appear in the form of military strength. This indeed is its more common form, particularly during the period of colonial expansionism and the carving out of Asia, Africa and Latin America for the European powers. It may sometimes appear in the form of economic power². Or it may appear in the guise of political power³. Each model has its own political and legal characteristics. But in each model an on-going slow process of de-culturalization followed by the introduction of principles, philosophies and patterns of administration, of law, of language and of culture of the colonizing power is detectable. This observation is not limited to Great Britain and the United States of America⁴. The point could, therefore, be made, that the introduction of the language, the law and the culture of the colonizing power was indeed a cornerstone of colonial policy⁵. This was an essential aspect of colonialism because the stage

1 "It is on the loom of language that all law is spun. Logic and history, morality and philosophy, commerce and science, may each contribute threads of their own, but through the loom they must pass before they enter the fabric of the law." Weeramantry (C. G.), *The Law in Crisis*, Capemoss, London, 1975, p. 133.

2 The present relationship of the United States of America with some Asian countries, viz., the Phillipines and South Korea, represent an aspect of economic domination. A similar posture is detectable in the relationship of Canada with the Caribbean and the United States with the South American countries.

3 The political relationship of Great Britain with the gulf states, with the Sultanates of the Federation of Malaysia and to a lesser degree among the members of the Commonwealth display a marked British influence upon their institutions of civil government, municipal courts and upon their legal systems.

4 The influence of Belgium culture, of language and of law on the former Belgium Congo, Ruwanda and Burundi; of French culture, language and the law on her former African and South East Asian dependencies and the influence of Italian institutions on Ethiopia is well known.

5 This is nothing unusual. The Arabs, the Romans and the Chinese too have considered that the colonisation process should involve the de-culturalisation of the colonised nation, and its replacement by their own culture. This is a natural result of colonialism. For some insight of the British Colonial Policy on Education; see Brown (G.N), 1964 (2) J.M.A.S. 365—377; Dillon (W.S) 1963 (1) J.M.A.S. 75—89.

it imposes upon the colonized nation is abnormal to an orderly process of social evolution. The aim was, therefore, to de-culturalize the people of the colony to an extent to which that they would culturally depend on the colonizing power and her way of life as the beginning of a new civilization⁶ under colonial rule. Witness the new class⁷ of privileged western oriented persons that one finds in the former colonies in Asia, Africa and Latin America. The creation, perpetuation and the propagation of such a class would make the colonial rule an inevitable fact of life, easily accepted and therefore of a more permanent nature.

Considering Britain as our prime example, the introduction of "The Common Law", the doctrines of Equity, and the Statutes of general application in force in England . . .⁸ brought into the colony not only a simple set of legal rules, but a whole new language, a new culture and a new way of life. The principles of the English common law which arose out of an Anglo-Saxon milieu was best understood and appreciated by the Anglo-Saxon race. It was therefore expected to experience difficulties in its application when transported across the seas and transplanted in a very different soil in Asia or in Africa. Denning L. J. (as he was then) in *Attorney-General v. Nyali Ltd.*⁹ observed this fact in the following passage:

"The next proviso says, however, that the common law is to apply "subject to such qualifications as local circumstances render necessary". This wise provision should, I think, be liberally construed. It is a recognition that the common law cannot be applied in a foreign land without considerable qualification. Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with the common law. It has many principles of manifest justice and good sense which can be applied with advantage to peoples of every race and colour all the world over: but it has also many refinements, subtleties and technicalities which are not suited to other folk. These off-shoots must be cut away. In these far off lands the people must have a law they understand and which they will respect. The common law cannot fulfil this role except with considerable qualifications. The task of making these qualifications is entrusted to the judges of these lands. It is a great task. I trust that they will not fail therein."¹⁰

The latent colonial policy for solving these problems of adaptation to a new system of law, was by a system of de-culturalization of the colonized nation. An English education, an understanding of British institutions of government and an appreciation of the British principles of justice and of law was made the key to a better way of life in the colonies. The law was the closest thing to a person's daily life and the language of the law had a profound effect on every person every day. The fact that one could not read the language of the law — English in

⁶ Brown (G.N) — "The British Educational Policy in West and Central Africa" (1964) 3 *Journal of Mod. Afr. Stud.*, pp. 365–377; Pratt (C.R) — "African Universities and Western Tradition — Some East African Reflections" (1965) 3 *Journal of Mod. Afr. Stud.*, pp. 421–428.

⁷ Wallerstein (I) — "Elites in French Speaking West Africa; The Social Basis of Ideas" (1965) 3 *Journal of Mod. Afr. Stud.*, pp. 1–33; Mazuri (A.A) — "The English Language and Political Consciousness in British Colonial Africa" (1966) 3 *Journal of Mod. Afr. Stud.*, pp. 295–311.

⁸ This formulation may be found in a number of reception statutes in British Africa. See Allott (A), *New Essays in African Law*, Butterworths, London, 1970, pp. 19–27 for a collection of these statutes.

⁹ (1955) 1 *All E.R.* 646.

¹⁰ *Ibid.*, at p. 653.

the English Common Law world — made his dependence under the law more gravely felt. To understand his “rights and duties”, his “powers and liabilities” he needed the assistance of an interpreter — sometimes a skilled interpreter — like a legal intermediary or even a lawyer.

This gave rise to two obvious results. First, it made the majority of the citizens immeasurably remote from the seat of government. The citizen was unable to understand the ways of government and the rules that bound him. He felt his relationship with the government shrouded in mystery. He became insecure, wary, fearful and uncertain of his position in his society. In a limited but in a machiavellian sort of way this could result initially in effective government. History has shown how violently such a society eventually erupts¹¹ sometimes discarding the colonial yoke with continuing distrust and displeasure. Second, it has resulted in a new basis for class analysis, namely language¹².

B. The Role of Language in the Process of De-colonization and the Emergence of “the New Elite”

The process of de-colonization may take several forms. Except for America (now the United States of America), Aden (now South Yemen) and Southern Rhodesia (now The Republic of Rhodesia), the de-colonization process in the British Empire adopted constitutional patterns commencing from negotiations and ending in bilateral agreements leading to Independence. The American Independence and the Adenese Independence followed a common path, commencing in an armed conflict resulting in a victory¹³ or a cease fire¹⁴ leading up to an Act of Independence¹⁵. The Rhodesian situation is still in a state of flux¹⁶. Every Act of Independence in law, constitutes a change. The four levels at which a territory may change are:

(1) At the political level: The change at the political level is sharpest when the change results from a national liberation movement, such as the Bolshevik Revolution, the Cuban Revolution, the Chinese Revolution or the liberation of Guinea-Bissau from the Portuguese. The change which results from such a conflict bears no resemblance to the changes at the political level in India, Malaysia, Nigeria, or Kenya, upon the advent of independence.

(2) At the societal level: The concern here is the changes in the cultural, in the linguistic, in the religious and such other ethnocentric embodiments of a society.

(3) At the economic level: When a dependent colonial economy becomes an independent economy, free from colonial restraints, certain changes in the economic patterns would naturally develop. Fundamentally, the move is from a dependent to an independent currency system. Suffering from the colonial syn-

11 Note the violence of the independence movements, since the end of World War II. Beginning with the war in Indo-China against the French. The political turmoils surrounding the Convention People's Party of Ghana, the Mau-Mau (Kenya), E.O.K.A. (Cyprus), passive resistance movements in India and the recent wars of National Liberation in the Portuguese colonies of Africa.

12 Wilson (A.J.), *Politics in Sri Lanka 1947—1973*, MacMillan, London, 1974, pp. 15—19.

13 In the case of America.

14 In the case of Aden.

15 The Treaty of Ghant () where the British government recognised the independence of America and for Aden. The Aden, Perim and Kuria, Muria Islands Act, ch. 71, 15 & 16 Eliz 2 of 1967. The preamble states that the Act relinquished her Majesty's sovereignty over those territories. It is also significant that neither U.S.A. nor Aden joined the Commonwealth of Nations.

16 Compare the judgments delivered at the Privy Council in *Madzembamuto v. Lardner-Burke* (1969) II.A.C. 645 with Beadle C.J.'s declaration in *Archian Ndhlovu and Others v. The Queen*. See: (1971) I.C.L.Q. at pp. 671—672.

drome, the former colonies often tied themselves to the currency of the former colonial power¹⁷. This has, as a rule, resulted in the under development of the former colony to the advantage of the colonial power.

(4) At the legal system level: Particularly in the British Commonwealth, little or no change is found between the pre-independent and the post-independent paradigms. Besides the statutes creating new and specialized laws¹⁸ required to launch the new independent territorial unit, the principles of the English Common Law and the common law framework of judicial administration remain unchanged. The Commonwealth appears to recognize¹⁹ their functionality, in that they provide a stable foundation to create and execute new laws and new procedures in the newly independent state.

These are the four levels of change a territorial unit may undergo, with varying degrees of emphasis against the background of a socio-political change. However, there appears to be two models of de-colonization, yielding different results.

The First Model of De-colonization

Generally, this model represents a constitutional process towards independence, which results in negotiations and finally in an Act of Independence. The sovereignty of the "Mother of Parliament" in Westminister, for those who have been former British colonies. The territories which have gained their independence in this manner have often shown a reluctance to change. In countries like Kenya, Malaysia, India, Sri Lanka and many others, the period immediately after independence shows little or no change from what it was before, particularly at the political, societal and the legal levels of change. The colonial model persists into the post-colonial period. A similar absence of any change or any substantial change may be found in some of the former French colonies in Africa which received a negotiated grant of independence, such as the Ivory Coast, Senegal and Gabon. The changes at the economic level have been the obvious result of the removal of certain colonial restraints. But that does not affect the attitudinal make-up of the new society. Their post-colonial model for developments has remained the one which is pursued by the Sterling, Dollar or the Franc group. This, in other words is "a Western capitalist oriented model" espoused by America, Britain or France. Although "revolutions" stemming sometimes from purely personal motives have subsequently introduced changes at the political level²⁰, the legal and the societal levels have always remained intact, reflecting the colonial model of yester-year. At the societal level in most Anglophonic and Francophonic former colonies, "a new elite"²¹ characterized by language (and culture) has emerged. Commenting on the relationship between education and elitism, Miller wrote:

¹⁷ Although the dollar and the sterling were the most popular currencies influencing the economies of the developing world in the fifties, and until the mid-sixties; the French franc and the Dutch guilder became equally important since the mid-sixties. The Association with the Rouble was natural for the Warsaw Pact countries and for Cuba. The Chinese currency always remained free from such an association.

¹⁸ Such as revenue laws and laws concerning nationality.

¹⁹ Although at the economic level the Dominion of Canada belongs to the "Dollar Area", her legal institutions, except in the Province of Ontario, are derived from England and the English Common Law.

²⁰ Viz., the abolishing of Parliament, as in Uganda, and for a period in Pakistan. Or the creation of one-party states or such, like self perpetuation of steps.

²¹ Clignet (R): (1970) 3 J.M.A.S. 425, Miller (R.A) (1974) 12 J.M.A.S. 521.

“. . . Education remains the pathway to elite status, which in turn is usually followed by employment in government, the nature of the educational systems of Africa will play a large role in determining whether the elite will solidify their position by becoming a ruling class. Education itself tends to set an individual apart, especially in a predominantly illiterate society. To acquire an education is also to be re-socialized into a modern Western Orientation in which achievement, universal, rational criteria tend to displace ascriptive, particular, and traditional norms.”²²

The fact that the “new elite” is versed in the language of government (including its institutions) in a newly independent territory provides them with the kind of political muscle which others could neither reasonably aspire nor actually realize within the new political set-up. The elite maintains itself with a degree of confidence by relating their superior knowledge both to the organs of government and of the law. The key to their success is that they form the minority that understands the language of government and of law. This has in many countries resulted in a social dichotomy between those who are versed in the official language in the country and those who are not. Translated into commonsense terms, the social conflict develops between the English-educated and the vernacular-educated members of the community²³.

The Second Model of de-Colonisation:

Turning to the second model of de-colonisation one sees a clear distinction here from the first model, both in the method and in the result obtained. Unlike the first model, the de-colonisation process here, does not follow constitutional lines. Independence is obtained by a process not within the contemplation of the law but by a process outside it. In the British Empire, America, Aden and to a limited extent Rhodesia, fall under this model. In recent times Guineas Bissau, Vietnam, Mozambique and Angola too fall under this second model. In each case it was a National Liberation Movement which has compelled the colonial power to grant independence or in some instances to snatch²⁴ it as a result of a victorious military adventure. In either case the fact of independence *ipso facto* becomes legal. Its legality is not derived from a preceding legal document as in the first model, but from the efficacy of the new legal order. The new constitution as the new source of law becomes legal on becoming efficacious, and nothing more is required for the recognition of the territory as independent²⁵. However, it is important at this stage to mention that under this model, unlike under the first model, changes of a radical nature take place at the four levels of change we have previously²⁶ enumerated. More significant here are the changes which occur at the level of society (culture and language), and at the level of the legal system. Changes at both these levels are the inevitable results of a successful National Liberation Movement.

22 Miller, *op. cit.* at p. 527.

23 See, Houtant (F), *Religion and Ideology in Sri Lanka*, T.P.I., Bangalore, 1974, pp. 16—17 and 240—251; DeSilva (K.M.), 8 *Verfassung und Recht in Übersee*, p. 331; Weston A.B. (1965) 1 E.A.L.J. 60 (also a critique of Weston's views at (1966) J.A.L. 164 and his reply at (1967) J.A.L. 63).

24 Vietnam as Indo-China proclaimed independence after their victory in the Indo-China war against the French. Similarly, Guinea-Bissau from the Portuguese.

25 I have examined the legal aspects of this thesis elsewhere. See Marasinghe (1971) I.C.L.Q., pp. 645—674.

26 See above at pp. 13—14.

In stages, the progress of the movement depends both for its safety and for its success on mass participation. The language of the masses becomes the language of the movement. The march is from the periphery towards the “centre of power”.²⁷ At each stage the centre must diminish as a power-base. This process continues until the power-base at the centre is annihilated, together with its legal and political institutions. The total success of a National Liberation Movement is marked by the establishment of a new system of civil administration backed by a new system of laws.

The policies, the principles and the goals of such a system of laws is formulated and derived from the liberation movement. Witness China, Cuba, Algeria and States with similar historical antecedents²⁸. In contrast, the policies, the principles and the goals of a legal system inherited from the colonial power under our first model, was derived from imperial institutions planted in the countries in question during a fairly lengthy period of colonial rule.

So put, the distinctive differences between the two models become apparent, and also unavoidable. The system of laws being a result of a successful National Liberation Movement in this second model, the influence of the revolution could be heavy in having the language of the people who contributed to the success of the movement being chosen as the language of the law. Continued popular participation is enhanced by communication, and, therefore, the dispensation of intermediaries in the communication process of both legal and political information is of the greatest importance for the maintenance and crystallisation of the achievements of the revolution. It is, therefore, natural that a successful National Liberation Movement would achieve changes at the “societal” and at the “legal levels” of change which are more fundamental and extensive than what is normally achieved under our first model. The popular participation in the creation of the new society under the second model is the key to the differences between the achievements of model one and model two²⁹.

C. The Effect of Language Switch-overs

1. Bridging the centre with the periphery

In every human society there is a centre and a periphery³⁰. The centre denotes the location of the government. The periphery denotes the governed. Practicality should dictate that the smaller the centre is, the easier it is to formulate policy and translate them into legal rules. This speaks strongly in favour of smaller³¹ cabinets in the developing world. There is then the periphery. Namely, the governed. Some may support the view that communication between the centre and

²⁷ In our view the term “centre of power” connotes a narrow and a more restricted group of persons than the “circle of power” (see above at footnote 60). The “centre of power” in some countries may be one person as in Uganda.

²⁸ Viz., Mozambique, Angola, Guinea-Bissau and South Yemen.

²⁹ Seidman, *op. cit.*, at pp. 708–709.

³⁰ Seidman, *op. cit.*, pp. 703–706 uses this kind of analysis. Needless to say it presents a very clear picture of the relationship. The term has been borrowed from the sociologists. See also Staniland (M), (1970) 8 *J.M.A.S.* 617.

³¹ There is a magic number which each country must work out having both the need to distribute the decision making process balanced by the delay in dealing with large numbers of decision makers. In the British system of Cabinet government, there are Ministers with Cabinet ranking and those outside that distinction. The latter are invited if and when they are required. The extreme is, of course in Uganda, where effective government rests on one person, President Amin.

the periphery should be a restricted area. According to that view it is suggested that the governed need know no more than that there are laws, regulations or orders and where³² they could find them. However, in recent times, much has been written³³ on the need for communicating more extensively to the periphery. According to this view, it is suggested that the governed should know, that there are laws, where they could be found and what in fact they are. From a standpoint of development it is said that actual knowledge as to what the law is, is of the fundamental importance if the behaviour of the governed are to be effectively regulated. Emphasising the need for communication Seidman wrote:

“Norms of development are, by definitions, rules prescribing new ways of doing things. They plainly do not match the myth that law merely embalms the customs of the people. If the norms of development did no more than that, law and the state could not affirmatively direct change. As a result, it is not enough for government to make the law cognoscible. Government must ensure that role-occupants know the law and know what it expects of them. The rules received . . . however, purport to do no more than make the law available to those who search for it.”³⁴

This need to communicate the law, as distinct from making it “available to those who search for it” requires either the adoption of an indigenous language as the language of the law or the translation of the laws from the legal language to an indigenous language for the limited purpose of communication. Of the two alternatives, colonial policy has been to adopt the method of translation³⁵ in a limited sort of way. Three sub-developments could be seen arising out of that policy. First, the translation of the rule into the indigenous language has often been so inexpertly done that no more than a vague meaning³⁶ of the law was conveyed to the people — the “role occupant”³⁷. The “role-occupant” may understand no more than that he is “obliged” to obey the rule. Often governments are slow, if not reluctant, to clarify their own obligations towards the citizen. Clarity is often reserved for the citizen’s obligations towards the government. The result would be a biased communication of the law in the “role occupants” own (indigenous) language. Second, the agency responsible for communication would, by its very position and duties in the administration, become a powerful organ for the manipulation of statecraft. If there was no such official source in the administration for communication in the local language, then the “role occupants” would form the habit of relying on un-official sources such as the radio, newspaper (for those who could read) or gossip³⁸. Third, in many third world countries there is

32 The laws in the third world countries are generally found in the gazettes or more particularly in statutes, published by the government printer. In some instances the local media may carry brief commentaries. All in all these methods of communication are hardly effective when one needs to consider the position of the rural folk.

33 Seidman, *op. cit.*, Mutung (O.K), (1973) 9 E.A.L.J. 11 Weston, *op. cit.*; Dube (S.C) *Communication and Change*, pp. 92, 96 and the various references found in these articles.

34 *Op. cit.*, p. 700.

35 The colonial policy has always been one of translating the law rather than adopting one of the indigenous languages. This was necessary to maintain the administration of the law, both the received colonial law and the indigenous law, in the colonial language. Colonial Judicial Service was a much coveted employment layer for the colons. The foregoing helped the colons to maintain a firm grip over it.

36 Translation badly done — vague meaning alone is conveyed.

37 The term was borrowed from Seidman, *op. cit.*

38 Gossip as a source of information has served the third world well. The rural folk are well aware that certain sources of information ought not to be trusted. In others they may find a degree of exaggeration. Innate native foresight helps them to a great extent in evaluating facts from myth. See how the courts have viewed this source of information in *The Republic of Tanzania v. Kasella Bantu*, Criminal Session No. 47 of 1969. See also Seidman, *op. cit.*, pp. 713—714.

an absence of formal channels for the flow of informations between the centre and the periphery³⁹. During the early colonial period, in Sri Lanka, the British relied on a system of "public criers"⁴⁰ to communicate with the people. This was an adaptation from the Royal administrations which preceded the British era. The system was used with considerable effect until the early forties.

Communications in British Africa was generally from an agent⁴¹ of the government at a "Barazza"⁴² to the tribal chiefs. It was the duty of such chiefs to communicate the instructions to their tribesmen. To ensure that the chiefs took the trouble to understand the instructions and communicate them as clearly and precisely as possible to their fellow tribesmen, the colonial government held the chiefs liable for any breaches of the law as a result of the failure to communicate. The "rod" which the colonial administration used to beat the backs of recalcitrant chiefs was "de-stooling"⁴³ them. The unsuitability of communicating laws by this method was known to the colonial administration too. But there was no better alternative, which was also politically expedient, open to them. The method on the one had placated the chiefs and their own prestige among their tribesmen was thoroughly enhanced. On the other hand the need for a specialised organ for communication in the circumstances did not arise.

The end of World War II heralded the commencement of the de-colonisation process in the British Empire. As a result of this process many countries which were once dependencies of the British Empire have set in motion language switch-overs, from English to indigenous languages. Sri Lanka and Tanzania are just two of the many⁴⁴ examples. In each country the basic problem has been one of bridging the gap between the centre, the government, and the periphery, the governed. In Tanzania and Sri Lanka, the publication of the laws in Swahili and in Sinhala followed by the use of these languages in the administration of justice, in each case, has to a large extent bridged the gap between the centre and the periphery. This switch-over has, however, raised two new issues. First, the benefit arising out of publishing laws in an indigenous language is limited to the literate layer of the society. In Tanzania, where Swahili is expressed in Roman characters, the percentage of the people who could read Roman Characters was found to be small. Besides, those who could read Roman Characters were found to be those who could also read and understand the English language. Therefore, the purpose of expressing law in Swahili was frustrated due to the low⁴⁵ literacy rate in the country. In Sri Lanka, however, Sinhala being a language possessing its own distinctive script the issues were different. Those literate⁴⁶ in Sinhala were exclusively benefitted from the language switch-over. But there arose in both countries another type of difficulty. This was the problem of expression. It was found that unless the expressions of the law in the two indigenous languages in

39 I.e. the "role-occupants" or the governed.

40 In Sinhala the system was called "Andabera gasima".

41 I.e. the District Officers, the District Commissioners or the government agents. Each area of British Africa had a different title for these agents of the colonial administration. In some parts they were called District Commissioners and sometimes government agents.

42 A colonial word for a meeting or conference. Usually a "barazza" had light entertainment and food too.

43 Again a colonial term for stripping a chief of his position. "Stooling" was similar to "throneing" of a monarch. Instead of the gold throne, the chief sat on a wooden stool.

44 Israel, India, Pakistan, Malaysia, Burma and South Africa.

45 In 1965 — 1 % literate in English and 10—15 % literate in Swahili. As a result of a pilot project conducted by the U.S. government, the literacy rate in English grew to 16.3 %. Swahili has no script. It is written in Roman characters.

46 According to the 1977 edition of "The World Almanac" Sri Lanka's literacy rate is 81 % in Sinhala.

question adopted the expressions commonly used by the people, even the literate would often misinterpret the law if they managed to understand it at all. In addition, therefore, there was required a switch-over in the style of expressing the law, if the language switch-over was to produce the desired effect. The result otherwise would be that the "role-occupant" would continue to need the services of an intermediary to interpret the law. His relationship with the centre may continue to be remote, in that, between him and the centre, as before, there will be the interposition of another functionary — a lawyer or a learned friend.

Second, at least during the early years after a language switch-over, countries have continued the policy of publishing their laws in both languages — namely in English and in the new legal language. Counsel have often been quick at detecting discrepancies between the English text and the indigenous text of a statute. Courts have often been faced with the dilemma of resolving this conflict. Relying on a provision⁴⁷ of the Indian constitution, Indian courts have held in favour of adopting the English text⁴⁸, however patent an error it may carry. Israel⁴⁹ on the other hand has suggested an objective approach. In such an approach the version of a statute in the language in which it was drafted, debated and enacted would be preferred⁵⁰ to the version in a language into which it was subsequently translated.

The objective approach requires a consideration of the legislative, political and social history surrounding the new law. Debates in Parliament — together with supporting reports and other aids would be essential keys for discovering the real intention of Parliament. As an appendix to this approach the common law rules of statutory interpretation require amending, so as to permit reference to what the civilians call the *travaux préparatoires*⁵¹. Subject to these two developments, the language switch-overs in both Tanzania and Sri Lanka have helped to bridge the gap between the centre and the periphery in a very considerable way.

2. Some Problems of Linguistic Association

However rich a language may be, the problem of translating concepts, particularly legal concepts, poses a very real problem. Shakespeare, Rudyard Kipling, Jonathan Swift and writings of such other writers have been effectively translated into numerous languages. The Bible, the Koran, the Communist Manifesto too have been translated into many languages with singular effect. The difference between these and law is that while in law one deals with concepts in other writings one deals with ideas. An idea has a form, but has a limitless freedom for expression and expansion. A concept too has a form, but unlike an idea, it has a precise perimeter within the confines of which its meaning could be sustained. Legal concepts are located, identified and postulated in terms of their attendant legal

⁴⁷ Article 348 of the Indian Constitution.

⁴⁸ Smt. Ram Rati v. Gram Samaj A.I.R. 1974 All. 106; Sagir Ahmed v. The Government of U.P. A.I.R. 1954 All. 257; Jaswant Sugar Mills v. The Presiding Officer A.I.R. 1962 All. 240; Medical Officer of Health v. Gulzari A.I.R. 1965 All. 170; Bhikam Chand v. The State A.I.R. 1966, Raj. 142; M/S Govindram Ramprasad v. Assessing Authority A.I.R. 1958 M.P. 16.

⁴⁹ (1966) 1 Israel Law Review 370.

⁵⁰ Haji Lal Mohammed Biri Works v. The Sales Tax Officer A.I.R. 1959 All. 208, approved by the Supreme Court of India in J.K. Jute Mills Co. Ltd. v. The State of U.P. A.I.R. 1961 S.C. 154. See also, Babu (M), (1974) J. Ind. L. Inst. 270.

⁵¹ Dias, Jurisprudence (3rd Edn.), Butterworths, London, 1970, pp. 138—141.

indicia. A “chose-in-action”, “a fee simple” or “a fee-offee” are clear and precise in the English Common Law. They could be expressed well in the English language. But “Fideicommissum”, “Solatium” or “Avaal” and such other civil law concepts are difficult to explain or translate into the English language. The first set of concepts from the English law find clear expression in the language of that law. The second set of concepts belong to the Roman law, and are best expressed in the language of that law, namely Latin. Again, the Roman legal concept of “Dominium” has no precise English translation. It is not “ownership” as used in the English language or recognised by the English Common Law. But something more expansive and more secure than the right of ownership. One of the basic difficulties which the Israeli government experienced on switching-over their legal language from English to Hebrew was the translation of the word “law”. Conceptually, they found “law” in the English language a different thing to what “law” meant in Hebrew. The State of Israel after much deliberation accepted the term “Mishpat Ivri” to represent “law” although it did not conceptually project the same connotation as the word “law” or “Recht” did in the English or the German laws. “Mishpat Ivri” in Hebrew includes not only *ius humanum* but also *ius divinum*. Elon⁵² wrote:

“Jewish law in its equivalence to the term halakash comprises all the normative rules of Judaism, both the laws applicable between man and man and the precepts concerning man and god. However, it is now generally accepted that the term “Mishpat Ivri” be used for those matters of the halakhah whose equivalent is customarily dealt with in other present day legal systems, that is, matters pertaining to relations between man and man and not precepts governing the relationship between man and his maker. This use of the term “Mishpat Ivri” diverges from the original meaning of the Hebrew term “Mishpat” or “Mishpatum”. Used in the sense of a system of laws — like the English term “Law”, or the German term “Recht” — the term refers not only to matters between man and man (in the sense of *ius humanum*) but also the precepts between man and his maker (in the sense of *ius divinum*) Today the term “Mishpat Ivri”, as defined above, is generally accepted in all fields of practical legal life and research in the sense here described. Throughout this work Jewish law is used as synonymous with “Mishpat Ivri” as explained above. In the Knesset Legislation use is made of the term “*din Torah*” . . . ; this Hebrew term is inaccurate . . . ”⁵³

Israel is not alone⁵⁴ with these difficulties. Much debate and discussion has taken place surrounding the difficulty of translating concepts from one legal language to another. Athulathmudali⁵⁵ has expressed the view that “it has been realised that assimilation of connotations is perhaps possible only between too closely allied legal systems, e.g. Roman and early Roman-Dutch law or between two closely related languages”⁵⁶. Comenting on the language switch-over in Malaysia the same writer wrote:

⁵² Elon (M), *The Principles of Jewish Law*, Faculty of Law, The Hebrew University, Jerusalem, 1975.
⁵³ *Ibid.*, p. 5.

⁵⁴ Athulathmudali (L.W.), (1962) 4 *Malay Law Review* 221; Weston, (1965) 1 *E.A.L.J.* 60; Alliot (M), (1967) *J.A.L.* 97; Haydon (E.S.), (1962) *J.A.L.* 179.

⁵⁵ *Op. cit.*

⁵⁶ *Op. cit.*, at p. 225.

“It is suggested that when one is concerned with translation into a heterogenous language — and by that I mean a language which has been considerably influenced by widely differing languages — inelegance does not necessarily result from the introduction of legal terminology borrowed from a language which has already influenced the receiving language. It may be possible to regard Malay which has had influences from Sanskrit, Portuguese, Dutch, English and other languages in this light.”⁵⁷

It is important to note that Athulathmudali reserves his method of transliteration to languages which have been derived from several roots. He call these heterogenous languages. Swahili, is, in that sense, a heterogenous language having received contributions from several languages. Sinhala, on the other hand, is not a heterogenous language, having been derived from an Indo-Aryan root. In such a case, Athulathmudali prescribes the method of coining words. The Sinhala Language Commission in Sri Lanka has adopted such a method. In compiling their “Legal Glossary”⁵⁸, they have resorted to the method of building new words using both Sanskrit and Pali roots. They both being of Indo-Aryan derivation, they stand in an emperical relationship with Sinhala. Weston⁵⁹, however, disagrees⁶⁰ with Athulathmudali. In Weston’s view the posture taken by Athulathmudali could result in cutting . . . “ law and language off from the people and the national culture, making it much more of an argot and a special preserve of a professional class than it is already. And yet law should both respond to the indigenous culture and be meaningful to the people to whom it is addressed”⁶¹. Weston’s principal contention was that, particularly for a language like Swahili, where a single “verb-stem” is capable of giving rise to several Swahili words; such an ability should be harnessed to produce the legal language in which a language switch-over in Tanzania must result. Explaining this process, Weston wrote:

“As the Common Law solution of novel cases was supposed to lie in the breast of the judge, so the words for novel situations do lie in the very principles of Swahili. It is important to realize that this process is not at all regarded by Swahilis as “Coining words”, but rather as the natural functioning of the language. This ability of automatic growth, less apparent in English, is one great reason why Swahili can without effort operate in the novel circumstances of modern life.”⁶²

Weston was not without critics⁶³. It is evident that the heterogenous nature of the Swahili language has this unique ability to expand its vocabulary. Some languages⁶⁴ apparently have this advantage. Sinhala has a different kind of advantage. Its close association with several Indo-Aryan languages affords it an invaluable opportunity⁶⁵ to grow both vertically in terms of precision and horizontally in terms of expansion. But most African languages⁶⁶ have neither the

57 Op. cit., at p. 226.

58 The Sinhala Language Commission has periodically produced what is known as “The Composite Glossary of Legal Terms”. It is published by the government printer and is sold at a nominal price.

59 Op. cit.

60 Op. cit., at p. 68.

61 Ibid., at p. 66.

62 Ibid., at p. 67. See also Mutungi (O.K.), op. cit.

63 Harries (L), (1966) J.A.L. 164.

64 Eg., Arabic.

65 The relationship between Sinhala and Sanskrit is a close one. It is also believed that Sinhala forms one of the earlier derivations from the Indo-Aryan system of languages. Its script is unique to Sinhala. And the circular formations of its letters are peculiar to the Indo-Aryan group. See: Paranavitharne (S), “Aryan Settlements-Sinhalese” in University of Ceylon, History of Ceylon, Vol. I. Part I, Colombo, 1959, p. 84.

characteristics of Swahili nor the fortune of Sinhala. My disagreement with Athulathmudali is a fundamental one. Transliteration should never be used as a basic method of effecting a language switch-over, even in the case of what the writer defines as a heterogenous language. Transliteration should be the last resort. The first order of preference must be in the selection of an exact or a near exact translation of the term in question. Regard must be had to both precision and common usage. For instance, in Sinhala, the commonly used word for a court of law is "Usaviya". But the official word introduced by the Sinhala Language Commission is "Adhikaranaya". The latter has a classical touch, but is rarely if ever used by the common man. "Adhikaranaya" delivers an awe-inspiring effect on a listener. In contrast the word "Usaviya" embodies a common touch. Such examples could be found in large numbers⁶⁷ in the Legal Glossary put out by the Sinhala Language Commission. Both Weston⁶⁸ and Harries⁶⁹ refer to such distinctions and nuances for the Swahili language. It is the responsibility of the translator to strike a balance between precision and common usage and avoid wherever possible technical or classical terms. Classical language mixed with technical terms may bring about an aura of dignity and even a psychological impulse to respect the law through fear. But the purpose of the language switch-over must be respected, which indeed is to bring the people directly into contact with the law. The second order of preference is transliteration. If precision and clarity could not be found by a direct translation of the legal term, then as a last resort transliteration may be cautiously adopted.

Besides these problems concerning the choice of words and terms, there is another and an equally important issue that may arise out of the use of language. This involves the method of drafting, the way of law is expressed. Surrounding every legal system has developed "a style of expression", which has many distinctive features. Many writers⁷⁰ have commented on this aspect. Weeramantry⁷¹ wrote:

"When unnecessary technicality is loaded further with a fair sprinkling of "heretofores", "hereinbefores", "whomsoevers", "hereinafters", "above-mentioneds", "hereinbeforementioneds", "under and by virtue ofs", "provided however" and the like, with which lawyers still love to clutter up their documents, the result is scarcely elegant and does little to improve the image of the law. This becomes a source of irritation, if not an object of fun. Too often the legal profession takes shelter behind an impressive collection of technical language that has grown up over the centuries, neglecting its duty to prune the dead wood to give fresh life to the tree."⁷²

Considering the way Sinhala notarial documents, "Sannasas"⁷³, "Aktha Pathrikas"⁷⁴ and such other official and semi-official⁷⁵ documents are drawn up, there is a

⁶⁶ Hayden (E.S), (1962) J.A.L. 179, has shown that transliteration is perhaps the main way by which the law could be conveyed to Buganda tribesmen, whose knowledge in a language is limited to Luganda. Of 145 legal terms selected by Hayden, 75 are transliterations.

⁶⁷ A number of examples could be found in Vol XI of the glossary (see footnote 108). That volume has a great many compound legal terms which have been given rather unusual translations.

⁶⁸ Op. cit.

⁶⁹ Op. cit.

⁷⁰ See Weeramantry, op. cit., at pp. 167—177 and Namasivayam (S), The Drafting Legislation, University of Ghana Press, Accra, 1967, chapters VI and VII and the footnotes there contained.

⁷¹ Op. cit.

⁷² Op. cit., pp. 168—169.

⁷³ The nearest equivalent is a Letters-Patent.

⁷⁴ Commands, commissions, letters of credence (credentials) and such matters of government.

⁷⁵ Viz., the announcements of births, deaths and marriages. Notices of Gamsabavas, village councils and

history of some standing supporting the use of technical language when drafting official documents in Sinhala. During a time when government depended to a large extent on the element of fear in the governed, as a basis for obeying the law, the use of this style of drafting may well have been justified. But today, when the policies and goals of government are different from what it was before, when mass participation is sought as a means to development⁷⁶, the former style is not only unsuitable but may well prove to be counter productive. Emphasis must, therefore, be placed on the plea that future draftsmen should (in both Sri Lanka and Tanzania) abandon the former style of expressing law and adopt a homely, simple but precise style, which would be intelligible to the common man⁷⁷.

Unless the language switch-over is also accompanied by a stylistic change by the fraternity of legal draftsmen, the legal intermediary will have a role to play as before. This will necessarily mean that he would interpose himself between the centre and the periphery and the benefits of a language switch-over may by degrees of stratification wither away.

3. The Role of the Lawyer and the Lawyer and the Legal Intermediary after a Language Switch-over

A language switch-over may be prompted by many diverse motives and may be projected towards equally diverse goals. But as an appendage to development a language switch-over is relevant, basically, to a bridging operation between the government in the broadest sense and the governed. Seidman⁷⁸ refers to this process as “crossing the gap between the centre and the periphery⁷⁹. Built into the colonial model of administration was the role of a lawyer as “a legal broker” or “a legal intermediary” in the society. His role at the best of times appears as an insidious one. As a participant in the process of formulating and expressing the law his responsibility was heavy in making the written law as complex, as convoluted and as unintelligible as possible. Taking a page from ancient Roman history, similar to the role played by the Patricians in Roman society, the lawyer by holding the key to the interpretation of the law, could effectively manipulate the present day society towards his own personal ends. A marriage between a professional lawyer and a professional politician is, therefore, an unholy one⁸⁰.

The role of the lawyer in such a society was that of “a legal broker”⁸¹ in the community. He interposed between the centre and the periphery. The legal intermediary too had a similar role to play in this type of society. Either as a part of the bureaucracy⁸² or as a “moral entrepreneur”⁸³ he too interposed be-

such other rural councils. Also notices issued by the village headmen both in charge of Law and Order (“Mudiyanse” or “Ralahami”) and in charge of fields (“Vel-vidane”).

⁷⁶ Seidman, *op. cit.*, pp. 703–712.

⁷⁷ Namasivayam, *op. cit.*, at p. 66 writes: “The language of enactments should be simple and ordinary expressions well understood by the public should be used. Latin or other foreign words and technical phraseology should be avoided as far as is practical. Further, a short word is preferable to a longer one if the meaning is the same . . . To avoid ambiguity, the same expression should be employed throughout the legislation and different words should not be used to express the same matter. Also the same spelling should be used throughout.” The authors drafting experiences are in Sri Lanka and in Ghana. His experiences of communicating law is therefore limited to the third world.

⁷⁸ *Op. cit.*

⁷⁹ *Op. cit.*, at pp. 703–712.

⁸⁰ A large percentage of the third world leadership has gone to the “lawyeringclass”.

⁸¹ Seidman, *op. cit.*, at pp. 678–700.

⁸² *Op. cit.*, at p. 699.

⁸³ *Op. cit.*, at pp. 706–708.

tween the government and the governed. This inevitably resulted in a distinct “lawyering-class” in the society. Had this class adopted a simpler way of communicating the law and a de-professionalised method of seeking redress from the courts, their position would have become redundant. It is their failure to change the system and their interest in preserving it, that makes their role insidious.

The purpose of a language switch-over is to down-grade the role played by the lawyering-class. It is this that makes it necessary that the language switch-over should proceed inter-linked with a change in the style of expressing the law. Unless the two are linked together, there will always be a place for the lawyer in the society, in the role of “a legal broker”. So long as legal brokerage becomes his prominent role, there will exist a gap between the governed and the government.

A plan must, therefore, be structured so that a language switch-over shall change the role played by the lawyering-class in the society. An effective language switch-over should render his role as “a legal broker” redundant. His role as an interpreter of the law will no longer be needed by the society. But his role as an officer in the system, performing specific law-jobs, will come crucial to the success of the switch-over. This necessarily requires certain attitudinal changes in the legal profession. This must result from a type of legal education and from a type of legal training very different from what he had received before the occurrence of the language switch-over. Related to the language switch-over, there must, therefore, occur a change in the aims and philosophies of legal education⁸⁴.

Immersed in the common law tradition, a colonial lawyer may view the legal system exactly in the same way as his counterpart would, in England. Namely, from a positivist standpoint of the Austinian breed. To him the role of the lawyer is clear, and it will somehow be difficult for him to leave that mould despite the language switch-over. Athulathmudali⁸⁵ while recognising this difficulty has suggested⁸⁶ that the legal profession should *inter alia* be consulted before the language switch-over occurs, so that they may not be unduly inconvenienced. The problem, surely, is not one for the legal profession but one of broad policy for the nation. The role of the lawyering-class after a language switch-over must be determined by the way the legal system thereafter works⁸⁷.

The responsibility of the lawyering-class after the language switch-over is a heavy one. He must not only see that the laws are correctly applied but he must also see that they are correctly interpreted. During the best of times the interpretation of laws presents many difficult problems. It will be more so when ideological, cultural and linguistic factors come to play. These factors will surely be predominant at the early periods of judicial administration under a new legal language. Particular difficulties will be felt by those who have had an English Common Law training, with the doctrine of binding precedent and common law rules of interpretation as essential tools of his trade. If rules of interpretation of

⁸⁴ It is somewhat disheartening that in Sri Lanka there has been no re-thinking of the aims of legal education in the light of a language switch-over. Aside from teaching the normal legal curriculum in Sinhala, there has been no restructuring of the curriculum. However, in Tanzania, the University of Dar-es-Salaam has introduced a new emphasis on the social and policy basis of law. Sri Lanka still teaches Voet's digest and such other traditional areas of law, in Sinhala. For Tanzania see footnotes 159–168 below.

⁸⁵ (1962) 4 *Malaya Law Review* 221.

⁸⁶ *Op. cit.* at p. 228.

⁸⁷ Implicit here is the view that the system generates its own “role-occupants”. The lawyering-class will become one such “role-occupant”.

statutes must guide the law during the early period after a language switch-over, he should rely basically on the "Golden" and the "mischief" rules and abandon the narrow confines of the "Literal" rule. The correct application of the "Golden" and the "mischief" rules will rest largely on the ideological training which a lawyer receives in the new society. After the initial switch-over the responsibility will pass to the lawyering-class to see that the legal system in the new language would move along a socially desirable path. If the legal system appears to form a gap between itself and the society, it is the duty of the lawyering-class to narrow it. It is fundamental to the duty of maintaining a rapport between the law and the society that these officials who do the law-jobs, those who interpret and those who apply the law are all in agreement with the goals and aspirations of the new society. Difficulties are bound to occur in heterogeneous societies. The interest and goals of one segment may appear to be diametrically opposed to those of the other segments. The ensuing conflicts may result in reducing the overall effect of a law, needing prompt adjustments. Adjustments by themselves may not effectively resolve the conflicts. No completely satisfactory result could thereby be obtained.

Recognising these problems, The People's Republic of China de-centralised not only the executive and the judicial functions of the State but also its legislative function. In their view complete de-centralisation was a key to social harmony. First having divided the population into units of four to eight thousand persons across China, each unit was made responsible for making laws, for executing them and resolving disputes arising under them. A revolutionary committee of nine functioned as the alter ego of the unit. The committee was elected for a period of one year. The members of each unit participated in debates and discussions on policy matters, on new proposals or other problems during two afternoons in each week. From such debates and discussions, resolutions emerged. These progressively made their way through the District Committees and the Provincial Committees into the Council of State. Policies embodying these resolutions in the broadest possible formulation travelled down to the unit at the commune, at the factory or at the street level of social organization. Blending the policy statement with the local conditions, the basic social unit formulated the rules which are to govern its members. These rules too are subject to a process of thorough going analysis at one of the afternoon sessions within the unit. By the time they became the law for the unit, the debates and discussions had performed the educative function which in China must precede the enactment of every rule.

This at once dispenses with the need for communication and the need for interpretation of the law. This process, in addition, overcomes the difficulties presented by the existence of several unrelated dialects across the country. Disparities in the form law takes is often found between provinces. More rarely are such disparities found between districts. Within a district, however, there is a close knit harmony and consistency as to what the law is. This method ensures that both the citizen and the officials who perform the law-jobs are fully appraised of the policies, the ideological contents, the meanings and purposes of each new rule. It also ensures the maximum popular participation in organised government. At many points the centre and the periphery coalesce. Particularly when laws are made. Our two models — Sri Lanka and Tanzania — do not propose a de-centralisation to the extent to which The People's Republic of China has achieved. The

bridging of the centre with the periphery in our two models must be achieved by different means.

This is by the use of language. Adopting Hart's⁸⁸ analysis, a condition precedent to a successful language switch-over is the development of an "inner-view" among the law-officers of the new system. The political authority in each case should consider its responsibility to prepare the legal system in this aspect, before effecting a language switch-over. Sri Lanka particularly could suffer from this stand-point. The "inner-views" of the law-officers may differ depending from which district of the country they originate. As we have mentioned earlier, the fact that Sinhala, unlike Swahili, is associated with a particular ethnic group has contributed largely to some of the problems that Sri Lanka has experienced as a result of the language switch-over. Some do predict similar societal problems for Kenya when the language switch-over does take effect.

As a condition precedent to a successful language switch-over there is a need to develop an "inner-view" among the law-officers of the new system. The political authority in each case should consider its responsibility to prepare the legal system in this aspect, before effecting a language switch-over. Sri Lanka particularly could suffer from this stand-point. The "inner-views" of the law-officers may differ depending from which district of the country they originate. As we have mentioned earlier, the fact that Sinhala, unlike Swahili, is associated with a particular ethnic group has contributed⁸⁹ largely to some of the problems that Sri Lanka has experienced as a result of the language switch-over. Some⁹⁰ do predict similar societal problems for Kenya when the language switch-over does take effect.

Emphasis must be placed upon the importance of law reform and legal education as appendices to a language switch-over. This may, to a large extent, enhance the "inner-view" expected from the lawyering-class in their new role after the switch-over.

4. Law Reform and Legal Education

Although law reform and legal education are two separate constituents of a lubricant, lubricating the legal system, they must share a common ideology and a common policy with the legal system. As we have emphasised earlier the legal system must reflect the value system of the society, and must be such as to eliminate the gap between the government and the governed. To that extent the legal system must share a common ideology with the society. This common ideology should, therefore, influence law reform and legal education in the society. Tanzania realised the need to broaden the education of their lawyers, and as early as in 1963 the Tanzanian government embarked on a series of annual seminars⁹¹ on "Law and Economic Development". The late Professor Wolfgang Friedman of the Columbia University Law School conducted these at the then

⁸⁸ The Concept of Law, Clarendon Press, Oxford, 1961, at pp. 89—96 and Chap. V generally. See particularly p. 113 of Hart op. cit.

⁸⁹ Ponniah (S.), Satyagaraha and the Freedom Movement of the Tamils in Ceylon, Jaffna, Ceylon, 1963; Kodikara (S.U.), Vol. 1, Modern Ceylon Studies, p. 99; Vittachi (T), Emergency '58, London, 1958.

⁹⁰ Mutungi (O.K.), (1973) 9 E.A.L.J. 11, at pp. 23—28.

⁹¹ A similar programme was conducted each year by the Faculty of Law, of the Hebrew University of Jerusalem for Uganda, Kenya, Malawi, Liberia, and Nigeria. See (1966) 1 Israel Law Review 632.

University College of Dar-es-Salaam. The seminars were open to lawyers, civil servants and law students. The difficulty was found, at that stage, in expanding legal education away from the "black-letter-law"⁹² and into areas of policy and ideology. Legal education in Sri Lanka is in need of urgent reform. The Faculty of Law at the University⁹³ pursues a curriculum and a philosophy inherited from colonial times⁹⁴. The Sri Lankan Law College, where the practitioners are trained, conducts courses which are wholly practice-oriented. The absence of a course on, or a teaching philosophy geared towards, ideology or policy appears to be a serious gap in the training of lawyers for a new Sri Lankan society.

Happily the situation in Tanzania is a very different one. Particularly, since the "Arusha Declaration"⁹⁵, Tanzania has taken measured strides towards creating a new "lawyering-class" associated with their language switch-over. The Faculty of Law has, since 1970 changed its emphasis from teaching substantive rules, to teaching the ideological and policy aspects which underlie the law. President Nyerere⁹⁶ set the pattern in a series of speeches in the sixties, emphasising the need for such a change.

He said:

"... Socialism cannot exist without law because freedom cannot exist without law, and socialism and freedom are — ultimately indivisible. In Tanzania — we are trying to build a body of laws which does serve the purposes of human freedom and equality — that is, which serve the cause of socialism."⁹⁷

"... I am sure some of the public complaints have nothing to do with judges and magistrates. All this means is that our system of laws is irrelevant . . . Tanzanian lawyers will, therefore, have to make new relevant laws if they are to provide room for a more effective implementation of Ujamaa."⁹⁸

"... Our change will, therefore, be effected almost entirely by the emphasis of our new development and by the gradual conversion of existing institutions into others more in accordance with our philosophy."⁹⁹

Following this statement of policy, the Faculty of Law re-structured their curriculum¹⁰⁰ in a way that they would produce the kind of lawyer who could guide the legal system towards ascertained political goals. These goals for Tanzania are such that a cohesive society, homogenous in nature, participatory in function and conscious of their duties towards each other and towards the Tanganyika African National Union¹⁰¹ must result. So divergent¹⁰² are the goals in Kenya that lawyers trained at the law school at Dar-es-Salaam are not readily¹⁰³ admitted to the Kenya Law School for their one year training before admission to the Kenya Bar. A simi-

92 A derogatory term for the traditional areas of law such as property, contracts, torts, wills, trusts, company, commercial and criminal laws.

93 At the Colombo Campus.

94 Witness the utilisation of external examiners from South African and British Universities.

95 President Nyerere of Tanzania declared in Arusha on February 5th, 1967, Tanu's policy on socialism and self-reliance. The contents of this declaration was expounded in Nyerere (J), *Essays on Socialism-Ujamaa*, Oxford University Press, 1968, see chap. 2; Saul & Cliffe, *Socialism in Tanzania*, East African Publishing House, 1972, Essay No. 36.

96 The President of the United Republic of Tanzania.

97 Nyerere (J. K), *The Purpose is Man* (being a speech delivered at the University College of Dar-es-Salaam on 5th August 1967) published in *Ujamaa — Essays on Socialism*, at p. 91.

98 Nyerere (J. K), *Daily News*, Dar-es-Salaam, 25th May 1973.

99 Nyerere (J. K), see footnote 159 above.

100 The curriculum of the Law School at Dar-es-Salaam.

101 T.A.N.U. party is the only political party in mainland Tanzania. It is not only a political party, but it is the politico-socio-economic unit of the country. It has an expansive executive function too.

102 Gower (L.C.B), *Independent Africa*, Harvard University Press, Cambridge, Mass., 1967, at pp. 125—129.

103 At a Faculty of Law Board meeting in the University of Nairobi, Mr. Tudor Jackson, the principal of the Kenya Law School, mentioned his difficulties in training Dar-es-Salaam graduates for the Kenya Bar.

lar policy-orientated training is essential for Sri Lanka today, particularly, when parliament has adopted a recent trend, to enact what is commonly referred to as “framework legislations”¹⁰⁴. Under such legislations, details are left to be worked out by officials performing a mixture of administrative and judicial functions which require an appreciation of social and political objectives of the country.

The present role of the lawyer in both countries is to create new institutions of government, new rules to keep the new society moving along politically and socially pre-determined paths. The People’s Republic of China has facilitated this mammoth task by de-centralising the three cornerstones¹⁰⁵ of government. Tanzania’s method is “communalisation” through the “Ujamaa” system. The utilisation of the “Ujamaa” as the basic social unit necessitates the formulation of a myriad¹⁰⁶ of regulations and rules to make the new institutions work. In addition to their formulation the role of the lawyer is to see that the regulations or the rules are correctly applied leading the society towards its pre-determined goals. This brings into focus the need to establish the “inner-view” or the “inner aspect” of the legal system, where legal education must to a large measure influence.

Some aspects of a lawyers’ work in the new society must involve socially oriented law reform. Legislation presents an effective vehicle, generally, for law reform, and a new philosophy on legislation, therefore, becomes an essential appendage to a language switch-over. Emphasised earlier the need for a language switch-over results from a need to create social harmony free from divisions and conflicts.

Mrydal¹⁰⁷ once wrote that “there can be no real national consolidation and responsible participation in local and sectional self-government and in cooperation if administrations, representative assemblies, law courts and schools continue to employ a language the masses do not understand”¹⁰⁸. If national consolidation is the goal of the new society, then a new philosophy for law reform and legislation must emerge as a part of the policy which supported the language switch-over. Something like the Benthamite view of “a felicific calculus”¹⁰⁹ should guide legislation. The new philosophy for law reform and legislation must be such that the first order of priority should be the good of the society as a whole resulting in its consolidation as a homogeneous political unit. The strengthening of the political centre where the “circle of power” is located should be relevant only in so far as its strength would contribute to the maintenance of a cohesive society. It is often suggested that a strong political centre helps to keep the society together. As a theory of government such a view is acceptable, provided that the interests of the periphery and of the government at the centre are not in conflict with each other. It is particularly evident that when governments employ the legal machinery to sustain their interests at the expense of the periphery, societies begin to fall apart. It is at such moments, when balancing conflicting interests and articulating delicate matters of social policy that a lawyer’s training not only in the craft of using rules but also in the art of discovering ideological and policy aspects of rules become invaluable to the new society. This helps in maintaining the bridge between

¹⁰⁴ Wilson, op. cit., p. 201.

¹⁰⁵ Legislative, Executive and Judicial.

¹⁰⁶ Williams (D), (1973) E.A.L.R. 193; Loxley & Saul (1972) E.A.L.R. 9; James & Ligunya (1972) E.A.L.R.

390.

¹⁰⁷ An Asian Drama, Pelican, London, 1967.

¹⁰⁸ Ibid., at pp. 86–87.

¹⁰⁹ A neo-mathematical relationship between pain and pleasure felt by a „roleoccupant” in relation to a law which affects him, originally formulated by Bentham.

the centre and the periphery in constant repair. That important task falls within the lawyer's court.

In sum the role of a lawyer after a language switch-over is one of a sociologist. He may sometimes be needed to act as an economist, a developmentalist or even as a political scientist, all within the framework of the law. In such an expanded role, the full potential of a lawyer as an intelligent being in a human society could be felt¹¹⁰. A plan for such a development in the legal profession is essential whenever a language switch-over is proposed. Unless a language switch-over is linked with such of these "elements of a different character"¹¹¹ a plan to merely translate the rules would lead to great inconvenience and to certain failure. What will then be blamed is the third world country, for fouling a great legal inheritance left behind by the departing colonial power. A sense of unwarranted chauvinism may even be attributed to them. The failure may be heralded as a signal for enhancing conservatism followed by an extended era of neo-colonialism¹¹². American and British aid in the area of law and legal education would be re-commenced with the inevitable result of separating the centre of political power from the citizens at the periphery. A wide divide between two classes¹¹³ may begin to arise, with its attendant class conflicts. Law and legal institutions will begin to reflect such conflicts and progressively social and political change may move away from the method of the ballot towards the method of the bullet. Political and social chaos may thereafter predominate. Social conflicts as a result of an ill-timed, unplanned language switch-over followed by similar conflicts resulting out of a reversal of that switch-over, would scarcely speak well for development.

It is, therefore, important that the institutions necessary to sustain the switch-over be first prepared, such as legal education, law reforms, legislative philosophies and a new professional class. While these conditions are germinating the process leading to the switch-over should be commenced. The Official Languages Bill, declaring Sinhala, as the official language of the country was passed in Sri Lanka, in 1956¹¹⁴. The Language of the Courts Bill was passed, subsequently, in 1961¹¹⁵. The implementation of the language switch-over was not begun until 1973¹¹⁶, thus spacing out the three stages of the switch-over. Supporting the switch-over, the Government of Sri Lanka introduced a whole new system¹¹⁷ of judicial administration, and re-structured the court system for the country¹¹⁸. The lament here is that the Sri Lanka Government did not consider re-structuring the legal education in the country, as a matter of priority to support its policy concerning the language switch-over. The extent to which the law schools¹¹⁹ in the country have been

110 Gower (L.C.B.), *op. cit.*, pp. 102—145.

111 Hart, *op. cit.*, at p. 96.

112 Both Gower, *op. cit.*, p. 134—145 and Getman (J. G.), (1968—69) 21 *Journal of Legal Education*, p. 513, at pp. 515—522, make a plea for aid from U.S.A. and Great Britain for legal education. The plea is made upon the basis that the legal institutions in Africa (for Gower) and in Asia (for Getman) embodies Western values borrowed from the English Common Law and, therefore, deserve help.

113 Very, broadly, those who are associated with the "circle of power" and those who are at the periphery, namely the governed.

114 Official Language Act, Act No. 33 of 1956. This Act should be read with the Tamil Language (Special Provisions) Act, Act No. 28 of 1958. See also Articles 7 and 8 of the Constitution of Sri Lanka, of 1972.

115 Language of the Courts Act, Act No. 3 of 1961.

116 Language of the Courts (Special Provisions) Law, Law No. 14 of 1973. See also Article 11 of the Constitution of 1972.

117 See The Administration of Justice Law, Law No. 44 of 1973, and the Administration of Justice (Amendment) Law, Law No. 25 of 1975 and Law No. 31 of 1975.

118 The new court structure came into effect on 1st January 1973. See Law No. 44 of 1973.

119 i. e. the Faculty of Law at the University of Sri Lanka, and at the Law College where attorneys are trained for practice at the Bar.

re-vamped is limited to one of instructing in Sinhala and in Tamil. There is no¹²⁰ detectable change in the philosophy of legal education in the country.

Tanzania, on the other hand, has adopted a programmed movement towards swahilization. A permanent Commission of Enquiry¹²¹ and an Ombudsman¹²² supervises the change. The educational policy of the country has been radically re-vamped. The medium of instruction has changed from English to Swahili. The curriculum at the Faculty of Law has been re-structured. We have mentioned this earlier. The language of the law and the language at the University are the same, namely Swahili. To enhance the change in the philosophy of legal education, admission requirements to the University too have changed. Besides requiring a period of national service prior to gaining admission to the University, the University as from the 1975—76 academic year has reserved a certain number of places to those who come directly from the Ujamaas¹²³ or from the Party¹²⁴. Tanzania has modelled herself on The People's Republic of China. Since the Cultural Revolution of 1966 no candidate for a University education in China comes directly from a school. He must first serve 2—5 years performing a national service in a factory, in a commune or in the Army¹²⁵. Sometimes he may serve as a technocrat¹²⁶, but that appears to be rare. His comrades at his work place, after two years may select him for a University education. He, therefore, enters the University as a representative of his fellow workers. The belief is that, such a training would make it difficult for him to acquire the elitist attitudes against which the Cultural Revolution was waged, in 1966. Be that as it may, the Tanzanian model presents an interesting case study for a language switch-over. The switch-over is still being accomplished. Administration of justice at all levels except the Supreme Court has now been completely swahilised. The Sri Lanka experiment too has yet to be completed. Sinhala is now being used spasmodically at all levels. The earliest recorded instance of conducting a criminal trial in Sinhala at the Supreme Court was in 1960¹²⁷. But much remains to be achieved in both countries. The debate has now shifted, particularly in Tanzania, away from the language switch-over, and towards the question of a new law for a new language. In Tanzania, this is regarded as a problem closely associated with the switch-over. In Sri Lanka, the ethnic problems caused by the switch-over is perhaps holding this question at bay. It is bound to appear in Sri Lanka too some day.

120 Except the fact of teaching subjects like "Roman Law" and "the Institutes of Voet" in Sinhala and Tamil, no other startling changes have been introduced in the curriculum.

121 This supervises changes in the society. It resolves certain types of conflicts and also reports annually on areas needing further reform. The commission publishes a report each year. These are now published only in Swahili. See also, Seidman, *op. cit.*, at pp. 709—710.

122 The Tanzanian Ombudsman is very different from its counterparts in the West. The Tanzanian Ombudsman performs several functions in which it sometimes acts as a government agency for effecting judicial and executive decisions. See *Oluyede (P.)*, (1973) 6 E.A.L.R. 31.

123 The basic social units in a communalised Tanzanian society.

124 The Tanganyika African National Union.

125 Since the cultural revolution the Chinese society has been structured along five lines: (i) peasants — in communes; (ii) workers — in factories; (iii) cadres — in what are called "white-collar jobs"; (iv) soldiers — in the People's Liberation Army; (v) students.

126 Cadre are those who do not fall within the other four social categories. Clerks, accountants, and other types of "white collar" workers fall within that category. Doctors and scientists are not cadres. They are workers in China.

127 See the report to *Hemapala v. R.*, (1963) 3 All. E.R. 632 in the Privy Council. The accused was tried in Sinhala during the sittings of the Supreme Court in Kalutara, on 20th December 1960.

5. A New Law for a New Language?

Difficulties experienced in the aftermath of a language switch-over often rouse thoughts of a new law for a new legal language. The scarcity of source materials¹²⁸ in the new legal language may be an early irritant. Sawyerr and Hiller¹²⁹ related the failure to create a new system of law for East Africa to the absence of indigenous source materials. Seidman¹³⁰ was particularly critical of the delay in getting out swahili versions of many important statutes which have a bearing on development. His main point was that statutes in Tanzania first appear in English and later in Swahili. This practice continues even today.

The absence of textbooks or legal periodicals in Swahili is a fact which neither the Tanzanian government nor the Faculty of Law has immediate plans for solving. The East African Law Review has an excellent coverage in the areas of development in the English language. No Swahili issue of the journal is envisaged. In Sri Lanka, some of the standard textbooks of the English Common Law have been translated into Sinhala. The translation is a direct one, maintaining the reference to English legal sources. This has created three unavoidable difficulties. First, considering the length of time taken for the translating process, by the time the translated version of the book becomes functional in Sri Lanka, the English author of the original has brought out a revised version of the same textbook in a new edition. This puts the students in Sri Lanka, at least one edition behind, almost from the beginning of its use. Secondly, the task of translating and publishing in Sinhala in the first place involves such a colossal expenditure, and such human resources, for such a small market¹³¹, that any revised editions of the book becomes truly unthinkable. The inevitable result is that the book becomes valueless as it steadily loses touch with legal development. Third, the authorities quoted in the translated textbooks would be from English legal sources, and unless the student is bilingual he may not derive much benefit out of the translation.

The answer to these kinds of problems is to encourage the writing of original legal texts in Sinhala. But this must surmount an initial difficulty. The absence of case reports and legal periodicals in Sinhala thwarts this attempt. The author of a legal text in Sinhala or in Swahili must rely on source materials which in both countries are to be found in the English language¹³². Again benefits of legal literature in the new legal languages in Sri Lanka and in Tanzania would become restricted to those with a bi-lingual education. English being the other language.

The New Law Reports of Sri Lanka are presently in their 78th volume. Yet there is no single reported case in Sinhala. Other legal periodicals and law reports in the Island suffer from the same defect. A similar comment may be made for Tanzania. Admittedly, the East African Law Reports are published by a foreign concern¹³³.

128 Viz, case reports, legal periodicals and textbooks.

129 Sawyerr & Hiller, *The Doctrine of Precedent in The Court of Appeal for East Africa*, Tanzania Publishing House, Dar-es-Salaam, 1971.

130 Op. cit., at pp. 703-706.

131 Unlike Swahili which is spoken potentially among 30 million inhabitants in the three territories of East Africa, Sinhala is spoken among the Sinhalese ethnic group only, and within Sri Lanka. This group doesn't exceed 9 million.

132 For Sri Lanka, the New Law Reports, the Colombo Law Review, the Ceylon Law Journal and the Journal of Ceylon Law and a collection of other periodicals are all published in English. See Metzger (B), *An Index to Periodical Articles on the Law of Ceylon*, Cave & Co., Colombo, pp. 3-4.

133 For Tanzania, the East African Law Review, The East African Law Reports and the Tanzanian High Court Digest are all in English. The East African Law Journal (Kenya) and the Uganda Law Focus are also in English. So are the Kenya Law Reports and the Uganda Law Reports. In fact, there is nothing on the legal horizon which could even in the future develop into a viable legal publication in Swahili, despite the Swahili speaking population of 30 million the three territories appear to have.

133 Butterworths & Co. Ltd., London, England.

It may, therefore, not be in their interests to publish case reports in Swahili. But the Tanzanian government is involved in the publication of the Tanzanian High Court Digest and the East African Law Review, through the Faculty of Law at the University of Dar-es-Salaam.

Similarly, while the Government of Sri Lanka publishes the New Law Reports, the University and the Law School publishes the journals¹³⁴. The Bar Council too has a hand in some of the other publications¹³⁵. The absence of any enthusiasm shown by both the Sri Lankan and the Tanzanian governments towards enriching the new legal language calls for critical comment.

A page may be taken from the Sudanese and Israeli experience in this area. Both had a particular relationship with Britain. Sudan was a condominium¹³⁶ while Israel was a mandated territory¹³⁷. In both countries the legal institutions were partly English and partly religious. In the Sudan the non-secular law was the Islamic law and its language was Arabic. In Israel, as the mandated territory of Palestine, there were two non-secular laws. One was the Islamic law, with Arabic as its legal language and the other was the Talmudic law, with Hebrew as its legal language. Both in Sudan and in Israel, the secular and the non-secular laws functioned side by side. A language switch-over took place in both countries after their independence¹³⁸. Associated with the switch-over one sees the effective application of a five-point programme.

First, in both countries, translating existing English textbooks has been discouraged. Instead, in each country, the writing of original legal texts in the new legal language has been encouraged. In each country the appearance of a textbook in Arabic or in Hebrew is regarded as a point at which the indigenisation of the medium of instruction in that subject becomes completed. Due to overwhelming historical and social experiences the Sudanese and the Jewish scholars worked untiringly towards producing source materials in their own indigenous languages¹³⁹.

It is not say that the Sri Lankan and the Tanzanian scholars have not produced legal texts of the very highest order of scholarship. Indeed they have. But these appear in the English language. The explanation may be that the scholars concerned having had a thorough English education become linguistically unsuited to produce original works on law in Sinhala or in Swahili. Or could it be a result of the elitism we have mentioned earlier? The historical¹⁴⁰ and societal¹⁴¹ sequences which brought into maturity the Sudanese and the Israeli societies may have contributed largely for ridding the last vestiges of elitism. That may perhaps explain why the

134 See Metzger (B), *op. cit.*

135 The Ceylon Law Weekly and The Ceylon Weekly Reports.

136 Holt (P.M), *A Modern History of the Sudan*, Praeger, New York, 1963, pp. 111–170.

137 Hanna (P.L), *The British Policy in Palestine*, published by The American Council on Public Affairs, Washington, D.C., 1942; Hurewitz (J.C), *The Struggle for Palestine*, Greenwood Press, New York, 1968.

138 Progressively, since Independence, Sudanese Courts began using Arabic as the medium of judicial administration. Supported by the growing ranks of Egyptian trained Sudanese lawyers the courts felt compelled to propagate the use of Arabic exclusively in the lower courts. The Court of Appeal left an option in each case to determine the language for argument to the bench itself. In Israel the adoption of Hebrew coincided with the birth of the State of Israel. The language of the courts is principally Hebrew.

139 Legal literature began to proliferate both in the Sudan and in Israel to meet the increasing needs of the language switch-over. See such examples as: Al Mahdi (S.M.A), *Outline of Pre-emptive Law of 1928*. For Israel see: Ginossar (S), (1966) 1 Israel L.R. 380.

140 Holt, *op. cit.*, Parts I–III; Henderson (K.D.D), *Sudan Republic*, Praeger, New York, 1965, chaps. 4, 7, 9 and 11.

Ben Gurion (D), *Israel — A Personal History*, Sabra Books, New York; Poliakov (L), *The History of Anti-Semitism*, Vols I & II, The Vanguard Press, New York, 1961.

141 Hill (R), *Egypt in the Sudan*, Oxford U. P. London, 1959; Holt (P. M), *The Mahdist State in the Sudan*, Clarendon Press, Oxford, 1970; Haesam (J.F), *The Arabs and the Sudan*, University Press, Edinburgh, 1967; Elon (A), *The Israelis Founders and Sons*, Holt, Rinehart and Winston, New York, 1971; Tamarin (G. R); *The Israeli Dilemma*, Rotterdam University Press, 1973.

Sudanese and the Israeli scholars have evolved a new society with a new kind of literature.

Second, as an inducement to indigenous legal scholarship the governments adopted the policy of publishing their laws and their Law Reports in Hebrew¹⁴² and in Arabic¹⁴³. Unlike the struggling, Sri Lankan or the Tanzanian legal scholar, his counterparts in the Sudan and in Israel had a swelling stream of Law Reports, articles and legal texts, in their indigenous languages to draw from. This made their work in Arabic and in Hebrew, original and authoritative. They watched as they wrote a new legal vocabulary expressing new legal concepts grow. As the literature in the legal language grew, the frontiers of the legal system expanded taking newer conceptual forms. The Israeli and the Sudanese legal systems stand today as witnesses to this very fact.

Third, as a development of the last two points, the Hebrew University of Jerusalem and the University of Khartoum made several changes in their programme for legal education. At the Hebrew University of Jerusalem students in the final year produced a research paper as a part of their course requirements. This paper was naturally written in the Hebrew language. Some of these papers have enriched, not only Hebrew as a legal language but has produced starting points for further development of Israeli law and legal institutions.

At the University of Khartoum in the Sudan, every student in the civil law section¹⁴⁴ was required, in each of the five years¹⁴⁵, to follow a course in Islamic law. That subject was taught by the instructors in the Islamic law section¹⁴⁶ in the Arabic language. As the source materials began to gather in the Arabic language, the medium of instruction in Arabic expanded into areas previously instructed in the civil law section in the English language¹⁴⁷. The transition into Arabic was facilitated by the overall movement into Arabic which succeeding Sudanese administrations have promoted since 1956. But the familiarisation afforded by the Islamic law section of the Faculty of Law to all students, who as a matter of course requirement were compelled to follow instructions in Islamic law in Arabic, was significant. It brought the student a realisation as to how legal terms could be expressed in the Arabic language. When the changes came to the civil law section the changes did not create unwarranted ripples among the student body.

In contrast the absence of a clear programme initiated by the University of Sri Lanka and the law college has created a number of unnecessary problems. The worst is one of lowering academic standards due to the unavailability of source materials. The University of Dar-es-Salaam is but slowly moving into instructing its law students wholly in Swahili. In 1974, the Faculty of Law was still, in the main, conducting their principal courses in the English language. This is a result of the faculty having to rely on expatriate teaching staff.

¹⁴² The Laws of Israel, and other legal materials like: Mishpatim (a journal published by the Faculty of Law), The Hapratlit, The Mispat.

¹⁴³ See the post 1968 volumes of the Sudan Law Journal Reports.

¹⁴⁴ The Faculty of Law had two sections. The Civil Law section and the Islamic Law section. The medium of instruction in the Civil Law section was English until it was progressively changed into Arabic. The medium of instruction in the Islamic Law section was always Arabic. The two streams were distinct and separate.

¹⁴⁵ Until 1968 the law school had a five-year programme leading to a LL.B. degree. From the 1968-69 academic year the programme was changed to three years at the law school, preceded by two compulsory years in the Arts and the Science faculties. The present writer was a member of the faculty at the University of Khartoum during both these programmes.

¹⁴⁶ The section was principally concerned with the training of lawyers in the Sharia.

¹⁴⁷ During the 1975-76 academic year besides Roman Law, Evidence and Company Law, most of the other subjects were instructed in Arabic.

Fourth, without over-emphasising the importance of the English language to legal education, a knowledge in English is still made a part of the admission requirements both in Khartoum and in Jerusalem. As English source materials are read and understood, sometimes as counterparts in support of Israeli legal principles, and sometimes as helping to break new ground, it is believed that the Sudanese and the Israeli students-of-law shall as a matter of course, expand their knowledge of the English language. During each year in practice, depending on the area of expertise he would then profess, the Sudanese and the Israeli lawyer would become further acquainted with English and perhaps in French too. Involuntarily his knowledge of European languages would thus grow, unhindered by the language switch-over.

Fifth, the provision of special programmes, as a part of their "Continuing Education in Law" would put the profession in touch with new developments abroad. These when discussed in colloquia in the new legal language would immeasurably help in formulating new concepts of law in the new legal language. These are regularly conducted at the Hebrew University of Jerusalem with the co-operation of the Israel Ministry of Justice. When foreign participation is required, the International Co-operation Department of the Ministry of Foreign Affairs too in Tel-Aviv becomes involved¹⁴⁸. The medium of discussion at these meetings is Hebrew. The legal fraternity in The Sudan are fortunate, being surrounded by a vast Arabic speaking world. A special relationship which has recently developed with the Faculty of Law at the University of Kuwait is of particular significance¹⁴⁹. However, at the number of colloquia held in the Arab legal circles each year, the Sudanese lawyers find a warm seat awaiting them.

Colloquia and special programmes are regularly held, both in Tanzania and in Sri Lanka. But none have thus far been held in Sinhala or in Swahili. The overall effect of such meetings, therefore, is not to help the legal system in its new linguistic setting, but, in a way, perhaps, to further strengthen the hand of the English language.

In sum, the overall result of this five-point programme will be to expand the frontiers of the law within the context of the language switch-overs in the Sudan and in Israel. The conceptual and the linguistic expansion progressing hand-in-hand, may perhaps move towards creating a new law for the new legal language. The five-point programme may serve as a blueprint for a plan which lays down a methodology not only for effecting a language switch-over, but also providing these necessary "elements of a general character"¹⁵⁰ towards making the switch-over a success. By the effluxion of time a new law for the new language may result. It will then in no way be a building constructed upon the ruins of another. It will rather be an expansion, by way of re-modelling, an existing edifice. That surely is most creative.

148 Dinstein (Y), (1966) 1 Israel Law Review 632.

149 The infra-structure of the Kuwaiti legal system may be traced to British legal institutions. This results from a special relationship which Kuwait enjoyed with Britain. The present Dean of the Faculty of Law, at the University of Khartoum, Dr. Said-el-Mahadi, spent a year as a guest lecturer at the University of Kuwait, during the 1969-70 academic year.

150 One of the aims of this paper was to expound Prof. Hart's view that: "The union of primary and secondary rules is at the centre of a legal system; but it is not the whole, and as we move away from the centre we shall have to accommodate, in ways indicated in later chapters, elements of a different character." (Harts, Concept of Law, p. 96).

In our view this open the door to considerations which have hitherto been barred from any legal analysis as being matters which are not strictly law. One such consideration, perhaps is sociology. The other may be economic theory. Recognition of these elements could facilitate the identification of development as an aspect of the concept of law. Raz, in his Concept of a Legal System, Oxford, 1970, however, shuts the door firmly in the face of development. His is an articulate presentation of a positivist view of law and the system which makes it function.

Some Problems Associated with a Language Switch-Over in the Third World

By M. L. MARASINGHE

The purpose of this paper is to examine the many perspectives which are drawn into focus by the implementation of a language switch-over. Although at the centre of our enquiry is its effect upon a system of laws, our enquiry will engulf a number of socio-economic issues which makes the relationship between law and "other matters" an obvious one. Among these "other matters" will be such aspects as culture, politics, social behaviour and economics.

This paper will be written under the following general headings:

- A. The colonial problem and the role of language
- B. The role of language in the process of decolonization and the emergence of "the new elite"
- C. The effect of language switch-overs:
 - (1) Bridging the centre with the periphery;
 - (2) Some problems of linguistic association;
 - (3) The role of the lawyer and the legal intermediaries after a language switch-over;
 - (4) Law reform and legal education;
 - (5) A new law for a new language?

Considerations of the Freedom Value in a Military Regime

(A Decade of Military Rule in Nigeria)

By EBITIMI E. CHIKWENDU

The paper proposes that the goals of modernization need to be defined and executed by all politically relevant groups in society. This is attained in an atmosphere that allows for free exchange of ideas between the government, the press, professionals, and politicians. However, in Africa, military oligarchies have used such highly complimentary and laudatory attributes of being "dynamic, selfsacrificing reformers" to create their own legitimacy without in actual fact possessing the competence or even desire to bring about progressive change. The outcome of military rule in most African nations has therefore been to stifle free discussion of political issues through over-centralization to protect the military rulers from public accountability and to prevent discussions on issues of non-fulfilment of plans.

The paper proposes that the complexity of government necessitating economic, social, cultural and technological development can be meaningfully pursued through free expression exercised by the populace through the press.

A decade of rule showing incompetence of military rulers necessitates the return to civilian rule where free expression is more likely to be realised as an aid to the functioning of government. The individual must feel personally secure in his person in order to make support input into the regime.