

Origins of The Government Legal Advisers Course (GLAC) at the Institute of Advanced Legal Studies

SIR WILLIAM DALE

I think of a day early in the year 1964, four years after HM - in this instance standing for Harold Macmillan - had announced that the 'wind of change' was blowing through Africa 'whether we like it or not', The words were addressed to the Parliament of South Africa, which was still in the Commonwealth, in a speech drafted for the Prime Minister by an Assistant Secretary in the Commonwealth Relations Office, who was *en poste* in the High Commissioner's Office in Pretoria, The 'we' was no doubt primarily directed at the members of the Parliament, and their constituents, However, the speech had a wider audience, and has often been regarded as signaling the beginning of something like a dash towards the independence of colonial countries. In Whitehall, the Commonwealth Relations Office had long before replaced the old Dominions Office, to meet the new nomenclature and the new heeds. I was its legal adviser; and we welcomed each newly independent country that the 'wind of change' -or, perhaps more accurately, the 'change of wind' - had blown up Downing Street from Great Smith Street. By 1964, there were ten of these countries: Ghana, Malaysia, Nigeria, Sierra Leone, Cyprus, Tanzania, Jamaica, Uganda, Trinidad and Tobago, and Kenya, Malawi and Zambia, released from the Federation of Rhodesia and Nyasaland, were on our threshold.

What were the governments of many of these 'new' countries to do for legal advice? Their law officers and their legal staff, to say nothing of the judges, were, until independence, members of the Colonial Legal Service (CLS), comprising English, Scottish, Welsh and Irish (especially Irish) barristers or solicitors. They were recruited in London after professional experience, and some of them were distinguished lawyers. They served under rules common to the whole of the CLS, and it was a tightly regulated service, over which the Secretary of State for the Colonies and his officials kept a close watch. Most of these lawyers were now, or would soon be, on their way home. The sudden voids, coming just at the time when the governments were faced with unprecedented demands for advice and assistance in every legal field, somehow had to be filled. The two main requirements lay in the fields of international law and legislation. Not even the members of the CLS knew much about international law. It was not their concern -that side of things was the business of the mother country. Yet the new state now had to fend for itself in a new environment, settle relations and enter into treaties with sophisticated governments which possessed the advantage of skilled advisers. As to legislation, this had been drafted by members of the CLS, with the help of *Legislative Fonts and Precedents*, by Sir Alison Russell, a former Chief Justice of Tanganyika, and an occasional precedent from the Colonial Office.

As a first step, the Commonwealth Legal Advisory Service was set up in London, to provide, at a distance, advice on the kinds of problems which had formerly been referred to the legal advisers to the Colonial Office, and now tended to come to the legal advisers to the Commonwealth Relations Office. The Service was given into the charge of the British Institute of International and Comparative Law, which was under the chairmanship of Lord Denning. The Ministry of Overseas Development promised an annual grant towards its maintenance, which still continues. However, it soon became apparent that this was not enough. The new governments needed men on the spot - trained men (women came later). The first to help was the Office of the Parliamentary Counsel in Whitehall, with which the legal advisers to the Colonial and Commonwealth Relations Office had always had close relations. Junior, but experienced, draftsmen from that Office were seconded for two years to Nigeria, Ghana, Pakistan and other countries, and besides the immediate help in drafting they gave, they were able to communicate expertise the local legal staffs.

Yet that could only be of limited assistance. The problem went even deeper than international law and the drafting of legislation. On the day I am thinking of, a letter came from Nigeria begging me

to find a place in some legal office where a lawyer could learn about oil law, and the drafting of concession agreements. The negotiation of air transit agreements -a source of revenue -was another pressing need. Attachment to the Office of The Parliamentary Counsel was a further request. It was impossible to meet the needs by such means. The idea came to me of a kind of 'school' in London, to provide solid courses of training for those in need of it, where the experts might perhaps be I persuaded to give a few hours of lectures and practical training. The Permanent Secretary of the Ministry of Overseas Development, Sir Andrew Cohen, an old Colonial Office man, was enthusiastic about the idea. After the exercise of such powers of persuasion as I had, the following leading Whitehall figures gave me their support and promised lecturers: Sir George Coldstream (permanent Secretary to the Lord Chancellor), Sir Noel Hutton (First Parliamentary Counsel), Sir Gerald Fitzmaurice and Sir Francis Vallat (successively Legal Advisers to the Foreign Office), and Sir Harvey Druitt (the Treasury Solicitor). I approached the Professors of International Law at Oxford and Cambridge, Sir Humphrey Waldock, Sir Robert Jennings and Clive Parry, and they were very ready to join in. So we got started; and I have before me an account of the first 'Course for Government Legal Officers from Overseas, at Marlborough House, from 6th October 1964 to 5th March 1965'. On the cover is a view of the elegant facade and lawns of what had been Queen Mary's residence, and inside is a statement of particulars of this course, which reads as follows:

This Course was primarily designed for Legal Officers with previous practical experience of the work in the Law Department. The talks were conducted very largely on the principles of a seminar and those attending the Course made an active contribution to the discussions. The Course was divided into three main parts, namely international law, legislative drafting and general topics of public law.

The object of that part of the Course relating to international law was less to attempt a general survey than to present and discuss particular problems that can arise in the conduct of external affairs. The broad fields covered were statehood and recognition of Governments: territorial jurisdiction; the international position of the individual; the control of natural resources; treaties; and international institutions. Within these fields particular topics were discussed, for example, the problems of divided states; diplomatic immunities, extradition and deportation; the expropriation of foreign property; the protection of fundamental rights in domestic law and international law; nationality; treaty practice and the current activities of the United Nations system with particular reference to the institutions concerned with trade, aid and finance. Several participants made studies of their own which were circulated and discussed by the group as a whole.

The subject of legislative drafting was dealt with as comprehensively as possible. The principles of legislative drafting were discussed, but the work for the most part consisted of practical exercises, as it is only in this way that legislative drafting can be taught. Whilst the style of drafting adopted in the United Kingdom was explained, regard was had to the forms used in the respective countries of those taking part in the Course and this point was taken into account in the setting of the practical exercises. The main part of the Course on legislative drafting was conducted by Parliamentary Counsel who dealt with the drafting of a Bill for Parliament, including drafting instructions, the draft Bill, Government, amendments to a Bill, the method of dealing with Opposition amendments, the committee stage and the report stage of the Bill. The Course also included treaty drafting, which although taken during the international law period more properly formed part of the drafting course. Attention was drawn to certain differences between the drafting of legislation and the drafting of treaties, and practical exercises were carried out under the supervision of one of the Foreign Office Legal Advisers.

The third part of the Course consisted of talks on a variety of subjects and was designed to present and describe the practice of the United Kingdom in certain fields of public law insofar as this might serve as a guide or help to persons from other countries. There was a model conference during the last three weeks of the Course when the setting up of a new International Organisation to control fuel was discussed. There were also one-day seminars arranged at the Universities of Oxford and Cambridge. There were visits to the Courts and the Houses of Parliament.

The 'Governors' (we adhered to the idiom of the 'school') included myself as Chairman, Sir Normal Anderson (a noted Islamic scholar as well as Director of the Institute of Advanced Legal Studies

[IALS]), the Treasury Solicitor, the Legal Advisers to the Foreign Office, the Colonial Office and the British 'Council, Sir Humphrey Waldock and Sir Robert Jennings, and representatives of the Ministry of Overseas Development and the British Council. The Director of Studies was Sir Edgar Unsworth, who had been Chief Justice of Nyasaland, and the Chief Lecturer in International Law was Sir James Fawcett, who had been on the legal staff of the Foreign Office and later became President of the European Commission on Human Rights. The names of the 50 'Persons who assisted in the Conduct of the Course' are too many to list here, but included Sir Anthony Barrowclough (later the Ombudsman), Professor Bin Cheng, Sir Noel Hutton, Mr F.A.R. Bennion and others in the Parliamentary Counsel Office, Norman Marsh (Director of the British Institute of International and Comparative Law), Professor S.A. de Smith, Professor Sir Henry Wade, Professor Sir David Yardley, Sir Robert Speed (a former Treasury Solicitor and then Counsel to the Speaker), and eight from the staff of the Foreign Office, six from the Treasury Solicitor's Office and nine from the Clerks' Office in the Houses of Parliament (with this galaxy of talent, I have allowed my pen to anticipate a number of chairs and knighthoods).

The Ministry of Overseas Development took responsibility for the administration and accommodation of the course, and wholly financed it except for one or two students from countries not qualifying for aid funds, who were paid for by their governments. The British Council saw that all those attending were comfortably housed and looked after their welfare. They came to this first course from Ghana, India, Jamaica, Jordan, two from Kuwait, Malaysia, four from Nigeria, three from Pakistan, Sierra Leone, two from Uganda, and Zambia.

* * * *

[From: Barry A.K. Rider (ed), *Law at the Centre: the Institute of Advanced Legal Studies at fifty*, Kluwer Law, London, 1999]