

BOEKEN, CONFERENTIES EN MEDIA
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THE FORMATION OF AFRICAN JURISTS

Seminar held at Speyer,
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Introduction

The seminar was organized by the Hochschule für Verwaltungswissenschaften (Institute for Administrative Science) together with the Gesellschaft für afrikanisches Recht (African Law Association) (1). This German association groups about a hundred jurists from the Federal Republic of Germany, other European countries, and Africa. It regularly organizes conferences on aspects of African law and publishes the Yearbook of African Law (2), which contains articles in German, French and English.

The two fundamental questions of the seminar concerned the kind of formation of jurists in Africa that is the most adequate for social and economic development and the way western Europe can cooperate in this formation.

The seminar gave an opportunity for dialogue and discussion between African and European jurists, between Common Law and Roman Civil Law jurists, between public law and civil law jurists, and also between legal practitioners and academics.

Education and formation in Africa

An obvious topic, and in some ways a very fundamental one, was the method and the problems of African education and formation in general, in other words, a larger field than exclusively the problems of juridical formation. The communications often mentioned infrastructural difficulties in the formation of jurists. It was shown that not only the lack of finances but also the neglect of the political powers and the distrust of some governments towards universities as potential centres of opposition can be serious hindrances to the development of structures for higher education. The discussions indicated that financial and infrastructural support can be useful but that the failure of many development programs in Africa in the past requires that the contributions be carefully prepared and that there be no fundamental interference in the social and cultural environment. It was stated that the aid should only be focused on specific aspects. Appropriate formation and self-formation was also insisted upon but the knowledge by African students of the Western culture and the indispensable support of western practitioners for formation in specialized fields must not be neglected. Finally, it was insisted that, for effective contributions to the formation of Africans, European specialists should first be introduced to the African world.

Concerning the material problems, the Western countries could give support by collecting African documents (for instance, textbooks and codices). This step could be followed by further help in publishing those documents in order to make their content more accessible for African jurists and other interested persons.

Academic and practical juridical formation

More specifically for the juridical formation, the discussions

showed that academic education as well as practical formation are considered essential. Nevertheless, it was stated that university studies, too short and too theoretical, should be completed by practical training. Law students should, at least, be confronted with actual legal problems.

With regard to cooperation in administrative and juridical training programs, it was noted that official support could be more easily obtained for those programs if terms like 'law and administration' are avoided and replaced by, for instance, 'resource management'. This observation reflects the present attitudes of governments, in the Western world and in Africa, which attach more importance to practical training (development management) than to the academic education.

Many of the participants, nevertheless, insisted that the effectiveness of Western inspired training programs be reviewed. In this sense, it was argued that Europeans at the universities can contribute to legal studies more by giving ideas than by transferring a complete, technical law system.

The importance of traditional law

The problem of the place of African traditional law in the formation of jurists frequently entered into the discussions. As it was noted that research on traditional law is very often shunned by academically trained African lawyers. Nevertheless, in Dar es Salam and elsewhere, customary law is studied and is also taught for a 'certificate in law'. It was also mentioned that, although traditional law is not handled as a separate course in a lot of African countries, it seems to be integrated in other general law courses. It was also argued, with reference to Japan, that traditional law should not be considered as essentially opposed to development.

Another related factor expressed during the discussions was the importance of the oral tradition in countries with a large

number of illiterate and oral-oriented people. The conversation confirmed that by studying and teaching law the differences between the Western notion of law and the (traditional) African notion should be considered preliminary and that, in speaking about 'development law', the concept of development does not necessarily include westernization. In this way the approach to traditional African law and also to new customary law, as it is growing in the African urban regions, appears fundamental not only for the teaching of law but also for the creation of a new (written) law by the state. The contributions of anthropologists could be very helpful in this regard.

What can Western Europe contribute ?

The second fundamental question, namely in what way Western Europe can contribute to the formation of African jurists, led to a number of interesting proposals from the academic point of view as well as from a concern for more technical formation.

The usefulness of material help in training and in codification and publishing has already been mentioned. During the seminar, preference was often expressed for the formation of Africans in Africa. If the training, for structural and other reasons, must be situated in Europe, the curriculum of the studies should be adapted to the developing countries and the African environment.

Concerning the juridical cooperation with Africa, we noted that several participants affirmed that cooperation could be useful in the teaching of international law. This could also help African states to improve their positions in the negotiation of international agreements. Attention was drawn to the cooperation possibilities with African non-governmental organizations working in the field of law, such as the Institute for Human Rights Education at Dakar. Such organization can stimulate public opinion and state

authorities to recognize the importance of legal training and the development of law. Help in transferring complete western European models was looked on with much reserve during the seminar. The contribution could be first made in the transfer of methods in the comparative law study.

The general rejection during the seminar of the transfer of complete Western law models in Africa did not mean that law transfer should be refused. On the contrary, regarding the well-elaborated legislation of Western Europe an important contribution can be made in specialized fields of legislation. Taking into account the justified fear, expressed during the seminar, of the imposition of Western models, this way of cooperation would undoubtedly respect much better the social, cultural, and political environment in Africa and give (technical) assistance to the development of a new integrated African law.

Last but not least, regarding the importance of comparative law, the following thesis, formulated during the seminar, should not be forgotten : in juridical cooperation with Africa, teaching and research on comparative law can create a two way flow of information that would be relevant also for the doctrine of law in Europe.

Notes

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