BUILDING JIGSAW PUZZLES AND
THE CARIBBEANIZATION OF LEGAL EDUCATION

Dr. The Honourable Lloyd Barnett O.J. Lecture
La Boucan Room, Trinidad Hilton & Conference Centre, Lady Young Road, Port of Spain
Thursday 7th September 2017

Introduction
First, let me express my gratitude to the Council of Legal Education and to its Chairperson, Mr. Reginald Armour, S.C., for inviting me, to deliver the feature address of this, the 12th Annual Dr. The Honourable Lloyd Barnett O.J., Distinguished Lecture Series.

I am truly honoured to be delivering this lecture, and to do so in recognition of the outstanding contributions and achievements of Dr. Barnett.

Indeed, it is the intersection of Dr. Barnett’s reputation as a Caribbean Legal Scholar with both my own involvement in legal education – albeit Judicial Education and my experience as a judge, that has prompted my topic for this evening:

‘Building Jigsaw Puzzles and the Caribbeanization of Legal Education’

Building Jigsaw Puzzles
I think most, if not all of us have, at least as children, built jigsaw puzzles. In my time, they were picture puzzles on cardboard pieces or wooden blocks. My own children also built jigsaw puzzles – but these included 3D plastic compositions.

Nowadays, you can build virtual puzzles online.
The technology may have changed, but the activity has remained. Building jigsaw puzzles as an activity of learning and development – of education, remains a staple part of the educational diet. And for good reason!

**Seeing the Whole**
Developmentally, building puzzles helps one appreciate the distinction between the parts and the whole. There are other benefits, of course, but this cognitive aspect is what I want us to think about.

Let us try to experience this together, now …

At first, we were unsure of what would be revealed. Then as the pieces began to come together we began to get glimpses of what was emerging.

The final piece in place, brought an ‘Ah ha!’ moment … the revelation of the whole, created by putting together, in a proper manner, all of the relevant pieces.

It is exactly this process that I want to build upon, as we explore together the central aspect of our topic for this evening: ‘The Caribbeanization of Legal Education’.

**The Questions We Ask Create the Worlds We Inhabit**
Philosophers know, as do the very best lawyers, that the ‘art of the question’ is fundamental. The questions that we ask, literally create the worlds that we inhabit!

Why? Because the questions that we ask, determine our lines of inquiry, and so, quite simply what we see and discover. And, what we create arises out of what we know (i.e. what we have seen and discovered). Thus, questions determine perception, discovery and creation.
Who Am I/What Am I?
An esoteric example. The question, ‘Who am I?’ is fundamentally different from, ‘What am I?’ The first would generally lead to a train of inquiry about identity, whereas the second would lead to a train of inquiry about constitutive elements.

The question, ‘Who am I?’ may reveal that I identify as male, East Indian, lawyer/judge, father, son, spouse, Trinidadian, child of God – things about identity.

The question, ‘What am I?’ may reveal that I am a psychosomatic being, so called ‘flesh and bones’; a mental, emotional, psychological (even spiritual), living bio-organism. One which ‘thinks, talks and walks’, plus a few other things.

The astute among you are of course thinking that the inquiry into ‘who I am’, can lead to the discovery of ‘what I am’, and this is so. But it is not generally normative.

Of Cricket and Swimming
Another more mundane example may assist. If one asks, ‘How is cricket played?’ One can discover information that may assist in swimming; but generally, even if that information is available, because the train of inquiry is about cricket, our focus on cricket leads us to only see and discover things related to cricket.

Legal Education
By now you would be thinking, what does all of this have to do with legal education? Everything and nothing!

Teasingly – nothing! Because when the Chairman called me to invite me to deliver this address, he told me that I would have to speak for 10 – 15 minutes. I orally
agreed to those terms. Then when the formal letter of invitation arrived, it stated: “the duration of the lecture is 30 – 40 minutes”! So I needed some essential fillers.

Everything, because I propose to pose a single question that I will invite you to consider over the next few days, as you contemplate the future of legal education in the Caribbean. The answers to which, I will suggest, can re-create the world of legal education in our Law Schools. Which in turn, can impact the practice of law and judging, and the shapes of the societies that we inhabit.

That question is: **‘Why are we educating people to become lawyers in the Caribbean’?**

**The Council of Legal Education’s Mandate**

In the Agreement establishing the Council of Legal Education, the two opening clauses of the Preamble state as follows:

**THE CONTRACTING PARTIES:**

**SHARING** a common determination to establish without delay a scheme for legal education and training that **is suited to the needs of the Caribbean**;

**AWARE** that the objectives of such a scheme of education and training should be to provide teaching in legal skills and techniques as well as to pay **due regard to the impact of law as an instrument of orderly social economic change**;

…
Core Objectives
Based on our ‘what’ and ‘why’ dichotomy, we can discern the following from these two opening clauses:

**WHAT** was intended, is ‘a scheme of legal education that is suited to the needs of the Caribbean’;

The core objectives of this scheme of education are:

(i) “teaching in legal skills and techniques”; and
(ii) “due regard to the impact of law as an instrument of orderly social economic change”.

Competency Training
Clearly, the first objective is an imperative to teach competency (“legal skills and techniques”) – both as substantive knowledge, as well as practical and procedural skills necessary for excellence in the practice of law.

Developmental Capacity
But what of the second objective? What is this pointing towards? How is it related to the first objective?

What does it mean to educate so as “to pay due regard to the impact of law as an instrument of orderly social economic change”?

Maybe you all as members of the Council of Legal Education, as well as Principals and Staff at the Law Schools, understand what this second objective is seeking to achieve; and maybe you have discussed it and already incorporated its mandate in the schemes of education that the Law Schools are offering; but I must confess that
it has captured my imagination as an educator and as a judge. It strikes me as a most visionary statement! And, I see the two objectives as parts of a single whole.

In my opinion, this second objective includes, at its heart, what I would describe as a social/economic developmental goal.

Thus, if one were to ask, **WHY** are we educating people to become lawyers in the Caribbean, I suggest that at least two answers emerge:

(i) to ensure competence; and
(ii) to achieve social/economic development.

Both of these objectives are interdependent and interrelated.

They appear to at least be the mandate of the Agreement establishing the Council of Legal Education, and a fortiori, of the Law Schools in the Caribbean.

It appears to me that it is this second developmental objective that uniquely contextualizes the education intended to be offered by the Law Schools, as Caribbean Legal Education. What we as a Region have agreed, is that it is essential that lawyers are trained to have an **instrumental developmental capacity to use the law to achieve social and economic change in the Region**.

From the arrival of the British Colonists in the Caribbean, until the establishment of Caribbean Law Schools, foreign, legal, professional education was normative. Competency in law, as a discrete professional discipline, was considered the hallmark of the great lawyer.

With the emergence of both local, indigenous faculties of law and law schools, the overarching goal has been the Caribbeanization of legal education, with two objectives in mind: (i) competency in law as a professional discipline, and (ii)
transformation of society through the use of law as an agent for change and development.

If this is indeed the mandate of the Agreement Establishing the Council of Legal Education, then maybe the question that faces us today, is whether we have succeeded in this ‘education for development’ endeavor; or, whether we are moving with sufficient purpose and success in this direction.

At this point, I must confess a certain sleight of hand on my part. I have identified for you two central goals of legal education stated in the Preamble to the Agreement Establishing the Council of Legal Education – contained in the first two clauses of the Preamble to the Agreement.

A Third Clause
There is however a third clause. It reads as follows:

CONVINCED that such a scheme of education and training can best be achieved by–

Firstly, a University course of academic training in a Faculty of Law designed to give not only a background of general legal principles and techniques but an appreciation of relevant social science subjects including Caribbean History and Contemporary Caribbean Affairs;

Secondly, a period of further institutional training directed towards the study of legal subjects, having a practical content and emphasis, and the acquisition of the skills and techniques required for the practice of law.
On a cursory reading of this clause, one may be forgiven for thinking that the ‘Caribbeanization’ process is relegated to the province of the academic training offered by the Faculties of Law (and not the Law Schools); and further, that it is to be achieved by education for “an appreciation of relevant social science subjects including Caribbean History and Contemporary Caribbean Affairs”. Further, that the province of the Law Schools is limited to “the study of legal subjects, having a practical content and emphasis, and the acquisition of the skills and techniques required for the practice of law”.

**Thesis**

The thesis of this lecture, is that the Caribbeanization of legal education, if it is to truly achieve its social and economic developmental goals – i.e. the use of the law as an instrument for progressive social and economic change, must include specific courses and skills based training that can facilitate the use of the law for this instrumental developmental goal. That is to say, it is not sufficient to teach/learn about the social sciences; what is required is teaching/learning how to use the social sciences methodologically in the process of legal argumentation, for the purposes of social and economic transformation in the Region.

**Two Cases**

Permit me to discuss two cases in which I was involved, to demonstrate the point that I am trying to make and as well, to disclose my own bias on this matter.
What to Wear When I Come to Court?

In January 2005, Trinidad and Tobago Senior Counsel Israel Khan entered the Coroner’s Court, in Port of Spain, Trinidad, dressed in a Nehru suit. It was a formal cut Nehru suit, with a closed and buttoned band collar, padded shoulders, fully lined with an internal breast plate and matching tailored trousers. In colour, it was ash to dark grey with a hint of moss green. The evidence of the master tailor who made the suit was that “the Nehru jacket though of a different style is equivalent in terms of formality and elegance to the western style business jacket”.

The Coroner denied Mr. Khan any right of audience because he was dressed in a Nehru suit. Mr. Khan was told that if he returned to court dressed in ‘a jacket and tie’ he would be allowed to address the Court. Mr. Khan declined the offer, and instead invited the Coroner to reconsider his position. The Coroner refused.

Letters passed between the parties, with Mr. Khan accusing the Coroner of cultural imperialism and highlighting the negative effects of British colonization on the cultural identity of colonized peoples. Mr. Khan also wrote to the Law Association of Trinidad and Tobago seeking its intervention.

The Law Association of Trinidad and Tobago responded saying that there was no need for its intervention – presumably because it thought the issue was not sufficiently important to warrant the use of its time and resources. The Coroner responded, explaining that his decision was based on: (i) “an unwritten convention … that male attorneys suit themselves in jacket and tie”, and (ii) the fact that “the Nehru suit … did not lend itself to befitting the dignity of the Court”.

Completely dissatisfied, Mr. Khan decided to litigate the issue of whether a formal Nehru suit was attire befitting the dignity of a Coroner’s Court in Trinidad and
Tobago and whether the Coroner was right to refuse him audience because he was dressed in a Nehru suit.

His first attempt failed. The trial judge held that the issue raised was not justiciable, but rather “a social issue that should be addressed by the Law Association”. Undeterred, Mr. Khan appealed this decision. The Court of Appeal of Trinidad and Tobago allowed his appeal and the litigation continued. At the substantive hearing a different trial judge dismissed Mr. Khan’s action, finding it unmeritorious. Again he appealed. In November 2011, by unanimous oral decision, his appeal was allowed and the decision of the Coroner found to be both unreasonable and irrational.

I was asked to write the formal reasons of the Court of Appeal. In addition to the ‘usual’ legal analysis, I included a section entitled – ‘Context: Law, Society and Culture’. Drawing on a wide range of non-legal sources, I concluded:

41. Trinidad and Tobago is no longer a British Colony, nor even an Independent Nation with the British Monarch as Head of State, but a Republic! What befits the dignity of a Trinidad and Tobago Court must be considered in this context and in the further context of the legitimate assimilation (and re-appropriation) and expression of authentic indigenous cultural identities and meaning, freely assumed, and which are no longer shackled to British colonial and imperialist norms in acts of masked mimicry.

42. Traditions may change, but standards and values can remain constant. Mr. Khan’s Nehru suit is such an example. Though not the “traditional jacket and tie,” it is nevertheless respectful of the
honour and dignity that is due to a Trinidad and Tobago Magistrate’s Court. Indeed, one may say it was in every respect … culturally decorous in relation to Court appearance and attire.

The formal written judgment was only signed by two of the three court of appeal judges, one preferring not to be ‘formally associated’ with my historical and socio-cultural analysis and application as set out in a written judgment!

These were things that we could ‘talk’ about, but not ‘write’ about!

Can I Be Heard?

John Reginald Dumas is a former head of the Public Service in Trinidad and Tobago and a former Ambassador and High Commissioner of Trinidad and Tobago. He is a well-known, public spirited citizen, who has consistently and fearlessly written about public interest and governance issues in Trinidad and Tobago (and the Region).

In September 2013, the President of the Republic of Trinidad and Tobago appointed persons to the Police Service Commission of Trinidad and Tobago. Mr. Dumas felt that two of the appointments were unconstitutional because the appointees’ qualifications and experience did not satisfy the constitutionally stated criteria. He wrote to the President requesting the revocation of their appointments, stating his grounds. This request proved to be unsuccessful, and so Mr. Dumas commenced litigation.

What was unique about this litigation, was that Mr. Dumas was neither personally nor directly affected by the two appointments. Rather, he commenced the litigation as a public spirited litigant seeking to vindicate a general grievance in relation to
the rule of law – the constitutionally of the two appointments to the Police Service Commission of Trinidad and Tobago.

Mr. Dumas’ locus standi to commence this kind of public law constitutional challenge, was questioned. The trial judge struck out the action on two bases. First, because it was commenced using the wrong form, and second, because only persons directly affected by an alleged constitutional infringement could have the necessary locus standi to commence an action for an interpretation of the Constitution and for other constitutional relief.

Mr. Dumas appealed, insisting that he had standing to bring this kind of constitutional challenge. In October 2014, the Court of Appeal by unanimous oral decision allowed the appeal, holding that Mr. Dumas did have the standing to bring this action.

As with the Khan decision, I was tasked with writing the reasons of the Court of Appeal. Again, in addition to the ‘usual’ legal analysis, I included two sections entitled – ‘Constitutional Culture and Values: Socio-Political Context’ and ‘Independence, Revolution and Republicanism’. Drawing on the historical and socio-political context that informed the 1976 Republican Constitution of Trinidad and Tobago, I concluded as follows:

127. In this socio-political constitutional context, there is very good reason to adopt more relaxed standing rules for constitutional and public interest litigation, especially where it concerns and raises constitutionally related issues of unlawfulness and the observance of the rule of law. Public interest litigation in non-Bill of Rights constitutional review, permits citizens to contribute to both participatory democracy and the vindication of
the rule of law. By facilitating it, one aspect of the needs and aspirations of the local society is fulfilled.

On this occasion my two fellow panelists signed the judgment, but they also both included a short jointly signed notation, which include the following:

148. Given the importance of our decision, Jamadar J.A. in his reasoned judgment has addressed the issues and reasons for our decision much more fully. While we agree with his approach and with his analysis and reasons; however we do not associate ourselves with his comments at paragraphs 120 to 127 of the judgment, set out under the rubric “Constitutional Culture and Values: Socio-Political Context”. Nevertheless, we certainly agree with him that there should be an expansive approach to constitutional questions which serve the public interest.

Here there was an explicit dis-association with my historical and socio-political analysis and argumentation in support of the court’s decision.

**Discomfort - Fear and/or Ignorance?**

I should point out that the judge who did not sign the judgment in the Khan decision was not among the two who disassociated themselves in the Dumas judgment. Further, that these decisions were given during the period 2012 – 2014, when the compliment of the Court of Appeal of Trinidad and Tobago was less than it is now. I would say therefore, that at least about 33% of the members of the Court of Appeal of Trinidad and Tobago, at that time, were uncomfortable with legal reasoning which included analysis that was based on historical, social, political and/or cultural realities in Trinidad and Tobago.
Before I proceed any further, let me be very clear that I am not in any way judging my fellow judges. However, what I am doing, is sharing with you my experiences and trying to reflectively evaluate them. In this regard, I should also note that amongst the practicing lawyers, who I have experienced in the courts of Trinidad and Tobago, there is a similar hesitancy, if not resistance, around this aspect of legal analysis and argumentation.

For me, the burning question is, Why? Especially in the context of the mandate for the Caribbeanization of law and society in the region. I would like to share some of my own thoughts on this matter, and then attempt to put the pieces together in the context of legal education.

In response to the inquiry – Why? I ask, What are we afraid of?

Hesitancy, avoidance, rejection are all psychologically fear based responses. That is almost self-evident. Hence: What are we afraid of?

Also in response to the inquiry – Why? I also ask, Do we know how? Ignorance, or lack of confidence because of lack of knowledge, are also inhibitors to action.

These two – fear and ignorance, could both explain why judges and lawyers may be hesitant, reluctant, even afraid to raise historical, social, political, economic and/or cultural developmental arguments in support of their cases and to advance through the instrumentality of the law, the social and economic transformation of societies in our region. Of course, there can also be ideological and jurisprudential bases for not adopting this line of argumentation, for which there must be due respect.
Even so, this is quintessentially the business of legal education. Moreso, when it coincides with a specific mandate to educate in relation to the “impact of law as an instrument of social and economic transformation”.

It would seem to me, that this goal of the transformation of society, is one of the most pressing needs in all of our societies. Indeed, it is a need that the law, and especially the interpretation and application of the law, addresses.

It is therefore the business of lawyers, and, a fortiori, of the Law Schools in the Region.

**Law and Society**

Society is shaped and formed by the law. And, the law changes both through Parliamentary interventions and court based interpretations and applications. In this way the development of society is inextricably bound up with the law.

However, the latter category – so called ‘Judge made law’, depends singularly on lawyers and their clients. Citizens must first bring grievances to lawyers, who in turn must then construct arguments to interpret and apply the existing laws in new and developmentally more just ways.

Seen from this perspective, it is really not ‘Judge made law’, but, ‘lawyer made’, even ‘citizen made’ law. Reflect for a moment on both the **Khan** and **Dumas** decisions. People may think that some judge is responsible for the development of the law in these two cases – but in truth, that is not entirely so.

Both Mr. Khan and Mr. Dumas had the sense of injustice, the courage of conviction, and of course the assistance of imaginative lawyers, and they are the
ones who really developed the law. We judges often get the credit, but, in truth we are often only the last piece of the jigsaw puzzle.

**The Role of Legal Education**

But there is yet another piece of the jigsaw puzzle, without which we may never see the whole, and not experience the ‘Ah ha!’ insights of new developments in the law and in society.

Judges were first lawyers and both once law students! **It is the Law Schools which plant the seeds of what is possible, and how to achieve it; which impact the knowledge and skills necessary for transformative legal argumentation; and thus for the development of law as an instrument of equitable social and economic change.**

These pieces of the puzzle must all be present and put together if we are to become truly free, independent, fair and just societies. And, **this begins with the Caribbeanization of legal education, which I suggest must include specific and coherent skills based training; that incorporates the historical, social, political, economic and cultural lived experiences of our peoples, in the reading, interpretation and application of the law.**

The written word – language, is never neutral. It is always contextually conditioned and imbued with meaning. Meaning which is grounded in the historical, cultural, social, economic and political contexts out of which it emerges.

**The Caribbeanization of law and societies requires the seeing and discovery of that meaning, followed by the creation and re-creation of the law so that it can truly serve the developmental needs of our societies.** These are skills that can be taught and learned, once there is the Caribbeanization of legal education as I am
suggesting. Indeed, as I have sought to demonstrate, that is part of the core business of the Council of Legal Education and the Principals, Tutors and Staff of our Regional Law Schools. **To be explicit, what I am advocating is the Caribbeanization of legal education, by the incorporation of social science insights, including literary and cultural expressions, into the interpretation and application of law.**

And, I may add, this Caribbeanization of legal education is a responsibility that continues even after graduation from the Law Schools; the onus for which lies with the Law Associations, Practitioners and Judicial Educators of the Region.

**Putting the Pieces Together**

Why are we educating lawyers in the region? In part (and it is an essential part of the whole), so that they can become agents of social and economic transformation. What is required in order to achieve this end? The Caribbeanization of legal education, whereby relevant social science subjects are taught not just as integral, but as integrated methodologically into the process of legal argumentation.

**The pieces of the jigsaw puzzle must fit together in the educational programmes offered by the Law Schools; then, the pieces will also come together in the practice of law, as litigants, lawyers, judges and the law interlock in the process of the seeing, discovery and re-creation of law in service of societal needs.**

In closing therefore, remember the jigsaw puzzle that you are tasked with building; know why you are educating lawyers in this region; and keep in your sights as you develop and design curricula and courses, the twin goals of competence and social
transformation. I am confident that you have already recognized that these two overlap, intersect and flow one into the other.

May our Law Schools be places where Creative Legal Conversations flourish. Places where both hearing and being heard occur. Places where curiosity is cultivated and voices can emerge and be affirmed and nurtured. Places where the lawyers of tomorrow are inspired and encouraged to be the leaders of the future. May these Conversations that begin in the Law Schools, have the force of reckoning as they arise in the practice of law, so as to progressively create and re-create the worlds we inhabit in this space called the Caribbean.

**Conclusion**

Thank you all for the graciousness of your attention. I am also grateful to the Council of Legal Education for your generosity in inviting me to be your speaker tonight and to permit me to explore with you some of my thoughts on the Caribbeanization of Legal Education.

Peter A. Jamadar  
Judge of the Court of Appeal  
Trinidad and Tobago  
7th September 2017