Zimbabwe Law Review

Volume 9 - 10 1991 - 1992

THE ZIMBABWE LAW REVIEW

1991- 1992 VOLUMES 9 &10

CONTENTS

The Zimbabwe Law Review is no longer a thing of the past!

You may have been starting to think that the Zimbabwe Law Review had become redundant. One unkind person went as far as to suggest that we should rename our journal "The Historical Law Review" !

Unfortunately we had fallen a few years behind in the production of the Review. The last issue to appear previously was Volume 7 / 8 covering the years 1989 and 1990. The Editorial Board of the Review sincerely apologises to all of valued subscribers and buyers of the Review for the inconvenience caused to them. In order to speed up the process of getting up to date we decided to combine Volumes 9 / 10 (1991 and 1992) of the Review into a single number. Those who have subscribed in advance will be receiving their ordered issues within the near future. The next volume, Number 11 (1993), will be ready for distribution within the next few months. The Editorial Board would like to assure you that in the future the Law Review will be produced on a more regular basis.

We hope that you will renew your interest in this publication by renewing your subscriptions if you have allowed them to lapse. Details of current subscription rates are to be found on the cover of the Review. There is a reduced price for those ordering a set of the Zimbabwe Law Review.

We would like to call for the submission of articles, book reviews and casenotes for consideration for inclusion in this publication. These are momentous times for Southern Africa. Democratic rule has finally come to South Africa after so many years of struggle, suffering and oppression. We would like to take this opportunity to extend our heartfelt congratulations to the people of South Africa on the attainment of their liberation from apartheid rule.

In Southern Africa there is an urgent need to analyse and debate topical matters such as issues relating to development and reconstruction, equitable land redistribution, the impact of economic structural adjustment programmes, the protection of human rights, democracy and constitutionalism and the protection of the environment. We call for the submission of articles on these and other important issues.

The Editorial Board would like to extend its sincere gratitude to the Raul Wallenberg Institute of the University of Lund in Sweden for its generous donation of desktop publishing equipment to the Faculty of Law of the University of Zimbabwe. This equipment was donated for use in the production of the Zimbabwe Law Review and other Faculty publications. This current number of the Zimbabwe Law Review was produced using this equipment.

TWELVE YEARS OF LEGAL EDUCATION IN ZIMBABWE

by

Lawrence Tshuma*

Introduction

In the twelve years since Zimbabwe attained its independence in 1980, a number of attempts to transform and improve legal education have been made. Until 1990, Zimbabwe had only one University, the University of Zimbabwe. Since then, two more Universities, the National University of Science ad Technology in Bulawayo and the Methodist Africa University in Mutare, have been established. The two new Universities are still in the process of construction and therefore offer a very limited range of programmes. Law is only offered at the University of Zimbabwe and is unlikely to be offered at the other Universities for a while. Thus, any discussion of legal education in Zimbabwe is restricted to the experiences of the former Department of Law and the present Faculty of Law at the University of Zimbabwe.

This paper analyses and evaluates legal education in the twelve years since Zimbabwe's independence. Law has been taught at the University of Zimbabwe since 1965 when the Department of Law was established under the Faculty of Social Studies. The focus of this paper is the post-independence period. The pre-independence period is only discussed to facilitate a proper appreciation of the context within which attempts to transform legal education have taken place.

The paper is based on the writer's observation and experiences both as a student for four years in the Department of Law in the early and mid 1980s, and as a lecturer in the Faculty of Law from its inauguration in 1988 to the present. However, reference is made to writings by other academics on legal education in Zimbabwe. Objectivity is an overriding concern in the writing of this paper. This however, does not mean that the paper is written with Olympian detachment. As an observer and a product of some of the attempts and a participant in others, it is impossible to adopt a detached stance.

Legal Education Before Independence

Law was not one of the disciplines offered at the then University College of Rhodesia and Nyasaland when it opened its doors to students in 1957. It was only eight years later in 1965 that the Department of Law was established in the Faculty of Social Studies.[1] As a result, prior to 1965 there was no provision of University legal education in Zimbabwe. At its inception, the Department offered a three-year Bachelor of Laws (LLB) degree in Roman-Dutch Law of the University of London.[2]

---

* Lecturer, Private Law Department, University of Zimbabwe.

1 See University of Zimbabwe Calender, 1991 at 61.

2 RHF Austin, "Access to Legal Education and the Legal Profession in Zimbabwe in Dhavan *et al*, (Eds), Access to Legal and the Legal Profession, (Butterworths, London, 1989) at 248.

Holders of the degree were not entitled to practise law without additional training. Those wishing to be advocates had to undergo a period of pupillage while those aspiring to be attorneys had to undergo a period of articled clerkship.[3]

The initial arrangement continued until 1968 when the Department was given the responsibility of teaching a Postgraduate Diploma which entitled holders to practise as advocates. By the end of 1969 the Postgraduate Diploma had been upgraded to become a one-year Bachelor of Laws (LLB) degree. the three year degree having been renamed the Bachelor of Law (BL) degree.[4] From 1969 onwards attempts were made to progressively develop the one-year LLB degree with a view to replacing the Attorneys Admission Examination as well.[5] This would have led to fusion of the two branches of the legal profession. It was only after independence in 1981 that the distinction between advocates and attorneys was abolished and the LLB degree extended to incorporate the skills of an attorney.

The Department of Law's admission policy discriminated against Blacks. Those who made it through the discriminatory admission policy had to contend with further discrimination in teaching and the conduct of examinations. In explaining the high failure rate among Blacks, the founding Chairman of the Department said Blacks lacked "flexibility and originality of mind to make a success of a University law course"![6] To capture the discriminatory policies of the day, one can do no better that to quote the then Chairman extensively!

> This all boils down to nothing very startling. What little evidence I can produce seems to confirm what one might have expected, namely that Africans as a class find it more difficult than non-Africans as a class to make the transition from school work to a University Law course. This is hardly surprising because much of our law is concerned with situations and concepts that are unfamiliar to most Africans and because the tradition of forming and expressing an independent judgment seems markedly less strong among Africans than among Europeans.[7]

The above quotation is typical of the racist ideology of the day. To justify their imagined superiority over Blacks, Rhodesian settlers went out of their way to prove that Blacks were incapable of achieving what Whites could achieve. It comes as no surprise that at independence, very few Blacks had managed to make it through the Department of Law. Very few survived the alienation, humiliation and racial prejudice that was the order of the day.

The Department taught law from a black-letter perspective.[8] The black-letter or expository tradition focuses and concentrates on the teaching of legal rules. Advocates of the approach believe that law should be taught as it is. The teaching

---

3 *Ibid.*

4 W Ncube, "Legal Education and Access to the Legal Profession in Zimbabwe Post, Present and the Future, unpublished paper presented at the Inaugural Meeting of Law Teachers under the BLSZ Roman-Dutch Common Law Project, April 16-20, 1989, 5.

5 RH Christie, "A Teaching Court" Editorial, 1974 *Rhodesian Law Journal*; p 82.

6 RH Christie, "African Graduates" (Editorial) 1969 *Rhodesia Law Journal*, pp 12–125.

7 *Ibid.*

8 RHR Austin, *op cit p* 252.

of law as legal rules fails to address important theoretical questions regarding the role and place of law in social processes. Within the context of Rhodesia, the expository tradition served to mask the racial policies of the settler government. It would have been self-defeating for the Department to train and produce lawyers who were critical of the racist establishment.

Thus, the major features of legal education at independence were a curriculum based on the 1965 University of London one with minor changes; discriminatory access to education based on race and the teaching of law from an expository or black-letter tradition. This paper analyses and evaluates attempts to change the inherited curriculum and to teach law from a socio-economic context. Not much will be said about access to legal education in the twelve years. Suffice to say that at independence the new government made education available to Zimbabwean from all social backgrounds. As a result, students of working class and peasant backgrounds have been able to gain admission to the Faculty of Law.

"New Wine In Old Wineskins", 1980–1988

At independence the Department offered two degrees — the three- year Bachelor of Law (BL) degree ad the one-year Bachelor of Laws (LLB) degree. Substantive law subjects made up the curriculum of the Bachelor of Law degree while procedural ones made up the Bachelor of Laws curriculum. The division into substantive/ academic subjects on one hand and procedural/vocational subjects on the other reflects the dichotomisation found in many institutions. Historically, University education covered the substantive/academic dimension while leaving the procedural/vocational dimension to the legal profession. In most common law jurisdictions, articled clerkship ad pupillage are still necessary before one can be admitted to practise law.

In the first year of the Bachelor of Law degree students were required to take Legal Systems, Constitutional History and Law, the Law of Contract, Criminal Law and the History of Roman and Roman-Dutch Law. In the second year they were required to take Commercial Law, the Law of Delict, the Law of Property and two optional full courses. In the third and final year they were required to take Jurisprudence and four optional full courses. As part of the Jurisprudence examination, students were required to submit a dissertation written under the supervision of a member of staff. The optional courses offered were Family Law, Company Law, Insurance Law, Tax Law, Administrative Law, Labour Law, Criminology, Public International Law, Private International Law, the Law of Succession and Customary Law.[9]

In 1981 the Legal Practitioners Act[10] abolished the division of the legal profession into attorneys and advocates. Henceforth members of the profession were to be called legal practitioners. The task of training legal practitioners was given to the Department of Law. It became necessary to change the curriculum of the one-year LLB degree which had been designed for the training of advocates since the new legal

---

9 See Bachelor of Laws (LLB) Degree Regulations, 1988 University of Zimbabwe Calender, 278 — 79.

10 Act No 15 of 1981.

of law as legal rules fails to address important theoretical questions regarding the role and place of law in social processes. Within the context of Rhodesia, the expository tradition served to mask the racial policies of the settler government. It would have been self-defeating for the Department to train and produce lawyers who were critical of the racist establishment.

Thus, the major features of legal education at independence were a curriculum based on the 1965 University of London one with minor changes; discriminatory access to education based on race and the teaching of law from an expository or black-letter tradition. This paper analyses and evaluates attempts to change the inherited curriculum and to teach law from a socio-economic context. Not much will be said about access to legal education in the twelve years. Suffice to say that at independence the new government made education available to Zimbabwean from all social backgrounds. As a result, students of working class and peasant backgrounds have been able to gain admission to the Faculty of Law.

"New Wine In Old Wineskins", 1980–1988

At independence the Department offered two degrees — the three- year Bachelor of Law (BL) degree ad the one-year Bachelor of Laws (LLB) degree. Substantive law subjects made up the curriculum of the Bachelor of Law degree while procedural ones made up the Bachelor of Laws curriculum. The division into substantive/ academic subjects on one hand and procedural/vocational subjects on the other reflects the dichotomisation found in many institutions. Historically, University education covered the substantive/academic dimension while leaving the procedural/vocational dimension to the legal profession. In most common law jurisdictions, articled clerkship ad pupillage are still necessary before one can be admitted to practise law.

In the first year of the Bachelor of Law degree students were required to take Legal Systems, Constitutional History and Law, the Law of Contract, Criminal Law and the History of Roman and Roman-Dutch Law. In the second year they were required to take Commercial Law, the Law of Delict, the Law of Property and two optional full courses. In the third and final year they were required to take Jurisprudence and four optional full courses. As part of the Jurisprudence examination, students were required to submit a dissertation written under the supervision of a member of staff. The optional courses offered were Family Law, Company Law, Insurance Law, Tax Law, Administrative Law, Labour Law, Criminology, Public International Law, Private International Law, the Law of Succession and Customary Law.[9]

In 1981 the Legal Practitioners Act[10] abolished the division of the legal profession into attorneys and advocates. Henceforth members of the profession were to be called legal practitioners. The task of training legal practitioners was given to the Department of Law. It became necessary to change the curriculum of the one-year LLB degree which had been designed for the training of advocates since the new legal

---

9 See Bachelor of Laws (LLB) Degree Regulations, 1988 University of Zimbabwe Calender, 278 — 79.

10 Act No 15 of 1981.

practitioner had to combine the skills of an advocate and an attorney. This was done by grafting additional training needed for the formation of the skills of an attorney, notary and conveyancer onto the courses designed for an advocate.[11]

Courses offered under the transformed LLB degree were Civil Procedure in the High and Supreme Courts, Civil Procedure in the Inferior Courts, Criminal Procedure, Bookkeeping and Accounts, Interpretation of Statutes, Legal Writing, Conveyancing, Notarial Work and Legal Aid Work.[12] Courses offered were all compulsory. From the list of courses it is obvious that students carried a very heavy load in one academic year. Consequently, the failure rate was very high.

Teaching in the Bachelor of Law (BL) degree was by way of magisterial lectures supplemented by tutorials. In the Bachelor of Laws (LLB) degree teaching was by way of magisterial lectures minus tutorials. Work in the Legal Aid Clinic provided practical experience to LLB students. The Legal Aid Clinic started in 1973 as a student initiative to provide advisory services to the public.[13] From its unplanned establishment it developed and was integrated into the curriculum of the LLB degree in 1976.[14] The Clinic worked in conjunction with the Citizens Advice Bureau to provide advice to indigent members of the community. Students were assigned to members of staff who were registered practitioners. These provided supervision to students assigned to them.

Subjects in the curriculum remained the same as they had been in1980 until 1988 when a new curriculum and degree structure were introduced. One would have expected the new dispensation to in usher changes in most institutions including the University. It is important to analyse the reasons for the continuity. The major reason seems to be the nature of the settlement that brought about independence. Zimbabwe's independence was the result of negotiated settlement — the Lancaster House Settlement of 1979. After a protracted nationalist war of liberation, the nationalist parties, ZANU-PF and PF-ZAPU, met with the settlers and their allies and agreed to a comprise which brought about independence in 1980. As a result of the compromise, most Rhodesian institutions remained intact.

The situation at independence was thus beset with glaring contradictions. While nationalist parties won the elections in 1980, most Rhodesian institutions and structures, including the repressive organs of the state, remained intact. They were thus inherited by the new government. To allay the fears of the settlers, the new government adopted a policy of reconciliation. Control of the economy remained, as it still does today, in the hands of multinational corporations and the White settler community. Because of the class interests of the new ruling class and the restrictions imposed by the independence constitution, radical economic policies which the nationalist parties had espoused during the liberation struggle were jettisoned. The new government focused its attention on the provision of social services such as education and health.

---

11 R.H.F Austin, *op cit* p 253.

12 See Bachelor of Laws (LLB) Degree Regulations, 1988 University of Zimbabwe Calender, 278-79

13 PC Norris, "Legal Leper or Midwife," 1978 Rhodesian Law Journal, 122.

14 *Ibid*.

The continuities at a national level were reflected at a micro level in most institutions including the University. In the early years of independence, the staff of the Department remained largely White. As Professor Austin who became Chairman of the Department of Law in 1982 puts it:

> .... expatriate lecturers were still necessary, and a majority of teachers were not only White but many were inherited from the colonial past. Thus a thorough — going curriculum change was not possible.[15]

As a result of macro and micro factors, a thorough-going change in the curriculum was thus not possible in the early years of independence. Since most of the lecturers were inherited from the past, the expository or black-letter approach which held sway before independence continued to be used by the majority of lecturers. As Austin has pointed out in the passage quoted above, expatriate lecturers were necessary in the early years of independence. Robert Seidman of the law and development school of thought was one the expatriate lecturers who joined the Department for a few years. His approach never became popular in the Department. Perhaps this had to do with the fact that law and development as a theory was already in decline following the decline of American hegemony.

One expatriate who influenced development in the teaching of law in the Department was Shadrack Gutto, a Kenyan exiled Marxist-Leninist scholar. Together with Kempton Makamure, a Zimbabwean who had studied law at the University of London while in exile during the liberation war, they sought to teach law in a "critical perspective and in the economic and social context of Zimbabwean realities."[16] Since the form of the curriculum remained unchanged, they sought to change the contents of the courses they taught as far as was possible under the existing structured constraints. From about 1984 they were joined by post-independence graduates of the Department who had been recruited for postgraduate training under the University's policy of staff-development. A number of these young academics adopted the socio-economic context to the teaching of law.

Most of those members of staff who had been inherited from the colonial past continued to teach law from a black-letter or expository perspective. Austin and Ncube argue that from 1982 there was a policy to teach law from an economic and social context, thus suggesting that there was a consensus within the Department. There was no consensus as Austin himself acknowledges when he says:

> Those who could, and would, taught their subjects in an economic and social context.[17]

There was thus a co-existence of a number of approaches, the dominant ones being the black-letter and the contextual approaches. For a short time there was an anarchist whose approach was heavily influenced by the American sociological school, especially Donald Black.

Since the black-letter and contextual approaches represented different and hostile philosophical and ideological positions, a kind of cold war existed between the two camps. Occasional hot skirmishes were not an uncommon occurrence. It needed the skills and diplomacy of Professor Austin to keep the Department running smoothly.

---

15 RHF, Austin, *op cit* p 253.

16 RHR Austin, *op cit* p 252 and W Ncube, *op cit p 19.*

17 *Ibid* p 253.

This, of course, is not to suggest that the Department was engaged in internecine warfare. Notwithstanding the ideological and philosophical differences, useful work was done to improve the quality of legal education offered by the Department.

In the prevailing atmosphere, no coherent articulation of teaching law in a socio-economic context was made by those members of staff who adopted the approach. To advocates of the approach, it was synonymous with Marxism. The version that appealed to Marxists within the Department was one which focused on the base-superstructure dichotomy. In describing this version one can do no better than to quote Shivji:

> Law, as a part of the superstructure, was seen as a reflection of the economic base which was considered determinant. Social change therefore was seen as a change in the economic base which law would ultimately reflect. Adopting the "historical and socio-economic method" meant tutoring students in Marxist classics and a dozen or so lectures in historical and dialectical materialism. Most courses began with the discussion of the five modes of production, etc. and probably ended with a textual and doctrinal analysis of the rules in the good, old positivist tradition.[18]

Had Shivji been writing about the Zimbabwean experience, he would not have been any closer to the truth. While the relative autonomy of the superstructure and its dialectical relationship with the base was acknowledged, the general tendency was to emphasise the dominance of the base. Law was also seen as an instrument of the ruling class. Consequently, an instrumentalist conception, of law was adopted. Because of the limitations of the instrumentalist approach, analysis tended to focus on public law which fits well into the mould. The approach, however, could not properly explain private law norms. The role of ideology was not emphasised. Marxist versions which emphasise both the form and content of law rather than just the content never took root.

As the curriculum remained largely the same, those who taught law from a socio-economic context sought to change the context of the courses they taught. The Law of Property was developed to include land law, a subject which has been central to the history of the struggle against colonialism and the struggle for social justice in post-independence Zimbabwe. Instead of teaching legal rules only the course focused on fundamental property relations within a historical and materialist context. Students were thus exposed and sensitised to the processes of dispossession of the indigenous people and the subsequent exploitation.

Other courses such as Tax Law, Family Law, Labour Law and Constitutional History and Law were developed and taught within a Zimbabwean historical and socio-economic context. A holistic approach was adopted in an attempt to show the role that law played in the imposition of colonialism, the maintenance of capitalist relations of production and exploitation based on class and race. Overall, the objective was to produce a lawyer who was aware of social, economic and political structures and institutions which supported the settler state before independence and the new-colonial state after independence.

---

[18] Shivji, Law, Democracy and the Rights Struggle: Preliminary Reflection On the Experiences of the University of Dar es Salaam UDASA Newsletter No 13, 1991, 19

However, there were a number of problems which emerged in the teaching of law from a socio-economic context. Since law was perceived as a superstructural feature dependent on the base, the role of Law in process of social transformation was not emphasised. Emphasis was placed on the transformation of the base which would then result in the transformation of the superstructure including law. Attempts to bring about change through law were viewed as evolutionary and therefore inadequate. Meaningful transformation could only come about through revolutionary transformation of social relations and this entailed transformation of the base. Needless to say that the approach marginalised the role and importance of law.

The approach tended to be instrumentalist and statist. Law was an instrument of the ruling class and therefore of little value to the working class and its allies. Once in a while, the ruling class was forced to make concessions. These concessions were designed to maintain the dominance of the ruling class. A negative attitude to law was thus cultivated amongst "progressive" students. Law was of value to the ruling class as an instrument of domination. Until the working class and its allies became the ruling class and used law to protect the dictatorship of the proletariat, law was of little value to progressive forces. This attitude alienated many students whose ambition was to practice law. Much as law is an academic subject, its vocational dimension should not be overlooked. The instrumentalist conception of law overlooked the vocational aspirations of students and thus alienated them.

There was also a marked lack of democracy in the way law was taught from a socio-economic context. Some lecturers tended to impose their views on students. Lectures and tutorials were seen as arenas of class struggle where reactionary views were not tolerated. Lectures were terrains for the contestation for ideological hegemony between the black-letter tradition and the socio-economic contextual approach. Unfortunately, this was contrary to the spirit of democracy which should characterise teaching and learning. Revolutionary terror, as it was affectionately called by some, did not advance the cause of teaching law in context.

The version of Marxism which was adopted within the Department encouraged opportunism amongst students. For the weaker students, sloganeering was substituted for serious intellectual and scholarly analysis. Some of the lecturers encouraged and seemed to thrive on populism. All it took was for a student to call them "Comrade" and he/she became a "Bolshevik". The majority of students who "adopted" Marxism did not internalise it. Consequently, it never formed part of their philosophical and ideological approaches and it never influenced and shaped their value systems. In a Department where the black-letter approach co-existed with the socio-economic contextual approach, students became chameleons who changed their colours to suit particular lecturers. Thus, for three years during their Bachelor of Law degree, some students became schizophrenics.

After the Bachelor of Law degree most students proceeded to the vocational one-year Bachelor of Laws degree. Since it was a vocational programme, most of the courses offered were procedural and hence did not provide room for teaching law in context. Most members of staff who taught in the Bachelor of Laws programme were against teaching law in context. There was thus a dichotomy between the two programmes which was well captured in this passage from a student magazine:

> Alll Marxism ends in BL III (Senior Lecturer in the LLB wing). I do not intend to train you to be moving bags of rules, but to learn law in its proper setting (Common reminder in the BL lectures)[19]

Once they crossed over into the Bachelor of Laws degree, most students ceased to concern themselves with wider social issues. Securing jobs in private practice which continues to be dominated by Whites did not depend on one's understanding of the law from a socio-economic context.

By the time they completed the one-year Bachelor of Laws degree, most students had forgotten about learning law in context. For those who went into private practice, there was no room for practising law in context. Their concern was making sufficient fees to meet targets set for them by their employers. Any remnants of social justice activism soon gave way to concern with fees and targets.

In a way, this reflects the contradictions of teaching law from radical approach in a context where there have been no fundamental changes in social relations. While the ruling party claimed to be guided by Marxism-Leninism, very little was done towards transforming society beyond removing the institutionalisation of racism. The economy remained in the hands of White settlers and multinationals who were joined by the new ruling class which benefited from its control of the state apparatus and the servicing of international capital. Radical lawyers had to make a living in that environment. The Marxists within the Department worked with other groups outside the University in a attempt to establish allies. At the time, there was a coincidence of ideology between the ruling party ZANU -PF and Marxist lecturers in the Department. Makamure had been a member of ZANU(PF) in England during the war but had fallen out with the leadership because of some differences. He still had contacts within the party. In terms of analysis in Marxist circles in the Department, Zimbabwe was going through the national democratic stage of the revolution which was a prelude to the socialist stage. The role of progressive forces was to assist in the consolidation of the gains of the revolution. ZANU-PF was perceived as a mass party composed of various class elements which had come together to oppose colonialism. The role of progressive intellectuals was to work with progressive elements within the party in an effort to transform it into a vanguard party.

Links were also established with the trade union and co-operative movements. Invaluable assistance was given to these allies in their struggle against a hostile economic environment. The role of intellectuals was seen as not confined to teaching and research only but as also extending extra-mural activities where intellectuals had to play a partisan role in changing society.

While attempts to develop links with other groups were commendable, the analysis of ZANU-PF was flawed from a theoretical and historical point of view. History is very rich in showing the limitations of nationalist parties. An honest and impartial analysis would have revealed that ZANU-PF was not different from other nationalist parties elsewhere which called themselves socialist. Its use of the state for repressive purposes was evident in the early 1980s when it unleashed the army on Matebeleland ostensibly to curb dissidents. However, at the time this was viewed as necessary in the process of consolidating the gains of the revolution during the national

---

[19] Zimbabwe Law Students Association, People's Problems 1985 Vol 1, 19

democratic stages. It was not until the mid 1980s when the state turned against the Marxist in the Department that ZANU-PF was seen for what it was. Thus, one got the impression that the analysis of the ruling party was based on self-serving opportunism on the part of Marxists in the Department.

There was very little theoretical debate within the Marxist group. There were two reasons for this. The first reason was that it was necessary to have a united group against those who taught law from an expository perspective. The second one was that Gutto and Makamure — once called the Marxist Brothers in a student Magazine, Focus -pioneered the teaching of law from a Marxist perspective and remained dominant in the group. In the mid 1980s they were joined by their former students who were recruited under the staff development programme of the University. Those who taught law from a socio-economic context adopted the Marxist version of Gutto and Makamure. By the time they matured and adopted independent positions, Eastern Europe which had served as a model was in trouble and Marxism under attack.

Thus, the teaching of law from a socio-economic context was beset with contradictions. While the approach made contributions which cannot be doubted, it also raised a number of problems, some of which have been discussed above.

The Legal Profession And Legal Education

As can be expected, the legal profession which remained dominated by Whites viewed with suspicion, the teaching of law from a socio-economic context. In the profession, there was a general feeling that students were taught politics rather than law. As Austin puts it:

> The isolation of Rhodesia from world development and the strongly anti-intellectual traditions of the colonial era have combined to give this approach the appearance, in the eyes of many in the profession and graduates of the earlier era, that what is being taught is politics rather than law.[20]

The profession was thus suspicious of the Department's approach.

As law is both an academic as well as a vocational discipline, the views of the profession which employs law graduates cannot be ignored by those tasked and entrusted with the responsibility of teaching law. Conscious of the importance of the profession, the Department tried to improve relations without compromising on matters of principle. Because of the animosity and suspicion engendered by the adoption of the socio-economic contextual approach, these attempts were largely unsuccessful.

In 1985 the then Minister of Justice, Legal and Parliamentary Affairs set up a Committee to Inquire into the Qualification as a Legal Practitioner. The Committee was chaired by a Supreme Court Judge and former Rhodesian liberal politician, Mr Justice NJ McNally. It included the then Chairman of the Department, Professor Austin and one other member of staff in the Department. Its terms of reference included:

---

20 RHF Austin *op cit* p 252.

i) examining the Legal Practitioners Act, 1981 and all laws and regulations governing or having a bearing on the admission of persons into practice as a legal practitioner;

ii) assessing the suitability and /or adequacy of the LLB course or other training programmes offered by the University of Zimbabwe for preparing persons for admission as legal practitioners; and

iii) recommending to the Minister a system designed to produce persons into practice as legal practitioners in Zimbabwe.[21]

The Committee presented its report in 1986 and recommended, among other things, the following:

i) University legal education in which the candidate obtains the LLB degree followed by;

ii) a two year period of training with a legal firm under a legal practitioner of five years standing. During that period the Qualified Legal Assistant would study for and sit examinations in certain practical subjects under the control of the Council for Legal Education. The courses were to be taught by legal practitioners outside the University and

iii) upon successful completion of these examinations, the Qualified Legal Assistant would be awarded a Law Practice Diploma which would entitle him/her to admission as a legal practitioner.[22]

The recommendations were opposed by Black legal practitioners and law students on the grounds that if implemented, they would give Whites who still dominated the profession an opportunity to control entry into the profession through their control of the proposed Council for Legal Education. They argued that the Committee had avoided the assessment of the adequacy or otherwise of the LLB degree offered by the University of Zimbabwe as a requirement for registration.[23] The Chairman of the Committee argued that there was a need for postgraduate training to maintain standards and that resistance to such training was emotional rather than logical.[24] The conclusions of the Committee and the views of the Chairman were not supported with any evidence pointing to the Shortcomings of the training offered by the Faculty of Law.

The Minister of Justice, Legal and Parliamentary Affairs made a statement on the Report in 1988. In his statement he announced that:

i) the LLB degree of the University of Zimbabwe will be the basic qualification for entry into the legal profession;

---

21 Government of Zimbabwe, Report of Committee to Inquire into the Qualifications for Registration as a Legal Practitioner, 1986.

22 W Ncube, *op cit* p 14.

23 *Ibid*.

24 N.J McNally, "Law in Changing Society: A View From North of the Limpopo!" 1988 Vol 105 *South African Law Journal* p 442

ii) graduates of the LLB degree who chose private practice oriented subjects (which were to be agreed between the Faculty of Law, the legal profession and the Ministry) would automatically qualify for admission without further study or examination;

iii) those LLB graduates who would not have opted for the right subjects would have to write examinations under the auspices of the Council for Legal Education; and

iv) those who would have passed those examinations and those who would have been exempted because of their "right options" in the LLB programme would then be permitted to practice as principals after twelve months of L- plating.[25]

The Council for Legal Education has been established in terms of the Legal Practitioners Act as amended. It is tasked, among other things, with determining qualifications necessary for entry into the profession. It is composed of legal practitioners from the various branches of the profession including the Faculty of Law. It has designated certain subjects as necessary for registration as a legal practitioner. Consequently, all students wishing to register as legal practitioners have to study the subjects designated by the Council.

The subjects the Council has designated include the Law of Public and Private Enterprise (formerly known as Company Law) the Law of Insurance and the Law of Sucession. To satisfy itself as to the adequacy of what is taught, the Council has required the Faculty to submit course outlines to it. This has met with resistance on the part of the Faculty which considers the inspection of course outlines to be an infringement on its autonomy. There is thus tension between the Council and the Faculty.

"New Wine In New Wineskins": 1988 To The Present

From about 1983 attempts were made within the Department to change the curriculum and the structure of the degrees offered.[26] At the same time the Department sought the establishment of a separate and independent Faculty of Law. The attempts finally came to fruition in 1988 when the Faculty of Law, comprising the Departments of Private, Public and Procedural Law and a Legal Aid Clinic under the Faculty, was established. At the same time, a new degree structure and a new curriculum were also introduced.

A four year integrated degree was introduced to replace the three year Bachelor of Law (BL) and one year Bachelor of Laws (LLB) degrees. The new programme integrated the teaching of substantive and procedural courses. Prior to the change, wide ranging consultations were held with the legal profession, government and academics from other countries were undertaken. The new degree is called the Bachelor of Laws Honours (LLB Hons) degree.

---

25 W Ncube *op cit* p 15.

26 RHF Austin, *op cit. p* 254.

A new curriculum was introduced with the new degree structure. In designing the new curriculum, the Faculty sought to provide a sound legal education which covered the following:

i) general knowledge, that is, the substance of the law, the theories, concepts, policies and principles underlying the law;

ii) the requisite legal skills such as skills for interviewing, advising, listening, mediation, negotiation and problem solving; and

iii) the appropriate understanding of the nature and function of the lawyer in society.[27]

Courses previously offered in the BL and LLB degrees were rearranged and new ones introduced. In the first year students are required to study Introduction to Law, the Law of Contract, Interpretation of Statutes, Criminal Law, History of Roman and Roman-Dutch Law and Constitutional History and Law. In the second year they study Criminal Procedure, the Law of Evidence, Civil Practice and Procedure in the Inferior Courts,the Law of Property, the Law of Delict, Family Law and Commercial Law. In the third year they study Jurisprudence, Accounting for Legal Practitioners and five optional courses. In the fourth and final year they study Clinical and Practical Skills Training, Civil Procedure in the High and Supreme Courts and three optional courses. They are also required to submit a dissertation which is now examined as a full course in itself.

The optional courses on offer are Agrarian and Forestry Law, the Law of Taxation, the Law of Banking and Negotiable Instruments, Administrative Law, Environmental Law, Socialist Law and Legal Systems, Public International Law, Private International Law, the Law of Succession, Criminology, the Law of Insurance, the Law of Public and Private Enterprises, International Economic and Trade Law, Women's Law, Advanced Accounting for Legal Practitioners, the Law of Insolvency, Conveyancing, Customary Law, Notarial Practice, the Law of Arbitration, Legal Ethics, Quantification of Damages and Advocacy.

During the long vacation at the end of the second year, students are seconded to the Ministry of Justice and other government departments, while at the end of the third year they are seconded to private legal firms. The secondment programme is meant to compliment the Clinical and Practical Skills Training Course. The objective is to enhance the skills that students learn and to expose them to the practical aspects of law while they are still at the University. In addition, they are required to participate in the Legal Aid and Advice Clinic.

The curriculum of the four year LLB (Hons) degree reflects the Faculty's objective to provide a holistic and integrated legal education. It combines academic or intellectual objectives with vocational or professional ones. Informing the integration is a desire to break down the dichotomy between academic and professional legal education. The integration also emphasises the essential relationship between substantive and procedural law and the interdependence between legal rights, obligations and remedies. Above all, the Faculty's objective is to produce and

---

27 W Ncube *op. cit.* p 21.

academically ad professionally sound lawyer who will be socially conscious, normatively and intellectually capable to answer the needs of a changing society.

The curriculum of the new degree reflects the optimism and ambitions of the Faculty. New courses such as Agrarian and Forestry Law, Environmental and Planning Law, International Economic and Trade Law and Women's Law reflect the Faculty's concern with issues that are relevant to Zimbabwe both internally and internationally. The laws of Public and Private Enterprise combines Company, Parastatal, Partnership and Co-operative Law — a move from the focus on private commercial enterprise.

So far the secondment programme which was introduced in 1990 has been a success. Reports from government departments and legal firms have generally been positive. However, in terms of assessment, a satisfactory assessment programme is yet to be worked out. The present arrangement requires the institution to which students are attached to submit reports o their performance. Students themselves are required to keep a diary of activities and to submit a report on their period of attachment. Faculty staff visit students while they are on secondment and submit reports on such visits.

The Director of the Legal Aid and Advice Scheme who is in charge of the secondment programme analyses the reports and advises the Faculty on any problem cases. Students who receive positive reports a awarded a pass while those who receive a negative report are required to repeat the programme.

The problem with secondment programmes to outside institutions is that the institutions have their own objectives which may not include education. The secondment programme may be subordinated to the objectives of the institution. It is also difficult to ensure that students receive uniform learning and guidance. Ultimately, it depends on the activities of those who are tasked with supervising students.

The Clinical and Practical Skills Training Programme was introduced to develop and enhance the skills competence of trainee legal practitioners. Legal practitioners perform a wide range of tasks such as litigation, negotiations, drafting, advising mediation and arbitration. It is necessary to equip them with the necessary skills so that they will be able to perform the various tasks they are expected to perform in their professional life. The course is taught through simulated exercises. Students are divided into groups which act as legal firms. Each group is paired with another to provide opposition. Each group is supervised by a registered practitioner on the staff of the Faculty who designs the exercises and assists students.

In 1988 a Committee, composed of two members of the Faculty and a distinguished visiting Tanzanian academic, Professor Issa Shivji, was appointed to Inquire into the Legal Aid Clinic. The Committee carried out a thorough investigation and made recommendations to the Faculty. As a result of the Committee's recommendations, the Clinic was dissolved and reconstituted under a full-time director who works with the Faculty. The objective of the Scheme is to move away from charity to empowerment of underprivileged and deprived sections of society. Thus, the cases to be taken by the Clinic should have an impact on society beyond the people being assisted.

Although the scheme is not yet formally open to people seeking legal advice directly, by the Director and student teams. It has successfully given assistance to the Zimbabwe Congress of Trade Unions in an action against the Minister of Labour, Manpower Planning and Social Welfare who had threatened to deregister the Union. Through the Round-up Support Committee, the Clinic was approached to give assistance to the Tashinga squatter community, at Mbare which the Harare City Council felt was an eyesore which had to be removed before the Queen of England's visit during the Commonwealth Heads of Government Meeting in Harare in 1991.

To enhance and develop the research competencies of students, the dissertation was made a full course in the final year of the degree. A course in Research Methods is offered as part of the dissertation writing process. The Faculty discourages doctrinal research. Consequently, the students are encouraged to choose topics with a field research component. Students are encouraged to investigate the relationship between law in the books and actual social practice. The dissertations submitted to date under the new regulations have been generally of a very high standard.

However, the aspiration of the Faculty have not been fully realised for a number of reasons. The new curriculum is too specialised for an undergraduate curriculum. Quite a large number of courses offered are too specialised and would fit well in a postgraduate curriculum. It has to be appreciated that the undergraduate degree is a basic one. Specialisation should come in at the postgraduate stage.

One other problem was the rejection on "administrative grounds of the modular structure for the degree by Senate"[28] As originally conceived, the degree was to be taught on a semester basis to ensure an even spread of the subject load over four years. Because of the rejection, students have had to carry a heavy load of about seven courses per year instead of four per semester. The heavy load has not allowed students to reflect on what they are learning. Fortunately, the University administration has now accepted the modular structure which should have been introduced during the 1993 academic year.

Students do not have as many options as planned by the Faculty because of the requirements for registration as a legal practitioner laid down by the Council for Legal Education. The Council has designated a number of subjects which are optional under the curriculum as necessary for registration as a legal practitioner. In practice, these subjects have become compulsory as almost all students wish to register as legal practitioners.

There has been no debate on the approach to be adopted in teaching law. The debates over the socio-economic contextual approach on one hand, and the black-letter approach on the other, are a thing of the past. It seems that one's ideological and philosophical perspective is now a private affair. Frustration and disillusionment arising out of working conditions at the University and economic hardships at a national level have had their toll. Coupled with the collapse of Eastern Europe which was considered as a model of social transformation, the above factors have taken the wind out the sails of former Marxists. In the prevailing environment, it is difficult to say how many people still teach law from a socio-economic context.

---

[28] B Hlatshwayo, Democratizing Legal Education and Access to the Legal Profession: Reflections in Zimbabwe," in Kibwana et. al, Law Curriculum Development in an African Context" Faculty of Law, Nairobi, 1991, p 176.

There has been no debate on the place of theory in legal education. It appears that the traditional view that Jurisprudence provides the theoretical element of legal education prevails within the Faculty. Thus, the Faculty still operates on the basis of Jurisprudence as a foundational course. This approach has a number of shortcomings.[29]

Teaching is still based on the magisterial lecture supplemented with tutorials. Because of the shortage of teaching and learning materials, the lecture method is preferred. The sizes of classes generally do not permit the use of the Socratic dialogue. The magisterial lecture method encourages indolence and does not allow participation. While tutorials may be used to cure the defect, heuristic teaching methods which encourage student participation throughout the learning process are better.

Conclusion

This paper has attempted to show the factors which have influenced and shaped legal education in Zimbabwe during the first twelve years of independence. It has analysed struggles for reform within the then Department of Law and the present Faculty. Positive and negative aspects of reform have been identified and analysed.

The paper has attempted to link changes within the Department and the Faculty with changes in Society in general. It has sought to show the problems of teaching law from a radical perspective in a nation which has not undergone radical transformation. In short, it has explored the limits of legal radicalism.

Finally, it has sought to analyse and assess curriculum development in a changing society. Curriculum development is seen within the context of wider social processes. It has been deliberately provocative but honest in the hope of initiating debate.

---

29 See Allan Hunt, "Jurisprudence , Philosophy and Legal Education —Against Foundationalism: A Response to Neil MacCormick" 1986 (6) *Journal of the Society of Public Teachers of Law*, p 292.