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EDITORIAL

THE LAWS OF THE CONSTITUTION

Freedom and independence are the perennial pursuits of the human being. Throughout the long history of human society people have ceaselessly struggled to free themselves from the fetters of nature and society. All the struggles that constitute the great epics of the history of mankind have been struggles to defend and to realise freedom. The history of the Zimbabwean people until recently had been one intense struggle to realise independence and freedom from foreign domination and racist subjugation. Our recent struggles have not only increased in real terms our personal freedom and the freedoms available to the masses of the people, but they have also enriched our spiritual and cultural love for the dignity and freedom of men. It is against this, our historical inheritance of love for the dignity and freedom of man, that this issue of the *Zimbabwe Law Review* and the scientific researches behind it have been put together. In other words, this special issue of the *Zimbabwe Law Review* yet again evokes and stimulates our desire as a nation to build a truly free and democratic society.

Lawyers are not and should not be mere technicians of the law. The Constitution is the fundamental thesis expressing the principles upon which our nation, or any nation, is built. The Constitution expresses all our values and therefore constitutes a measure of the level of our freedom and humanity. Its criticism is the criticism of the standards of its values. Lawyers play their part in making and advising on legal aspects of both the substance and the technical standards of constitutions. In order to do a better job of this or to express the democratic yearnings of the people, our lawyers must possess a high level of critical values to assist society as a whole to create more and better freedoms for the well-being and property of the people. These freedoms to be enshrined in the Constitution of the land.

We hope that in this issue, as Zimbabwe prepares to make its own new Constitution after 1990, that the researches and critical visions on constitutionalism made here by the various authors from various scientific and ideological vantage points will assist our people and our leaders in charting and further broadening the road of freedom and independence in the drafting of our own new and sovereign Zimbabwe Constitution as we march forward towards the year 2000.

Issue Editors

ACCESS TO LEGAL EDUCATION AND THE LEGAL PROFESSION IN ZIMBABWE

PROFESSOR REG AUSTIN*

ACCESS TO THE LEGAL PROFESSION: THE CHALLENGE AT INDEPENDENCE

Consistent with the discrimination against black citizens which characterised Rhodesian settler rule, access to legal education and the legal profession was deliberately and almost totally denied to blacks until Zimbabwe's independence in 1980. This fact, combined with the exodus, particularly of whites in the legal branches of the civil service, resulted in the democratically elected government having to take radical measures to deal with the situation. One aspect of this was the establishment of crash courses, initially taught largely by academics in the Law Department of the University of Zimbabwe to specially recruited students who would not have qualified for normal entry to the University. These were destined to fill posts as prosecutors and magistrates in the Magistrates' Courts and as presiding officers in the newly created Community Courts.

The training of prosecutors and magistrates, who are full-time civil servants, continued as a part-time, special programme at the University until the end of 1986. These students were examined in a slimmed-down core of subjects in first criminal and then civil law, but received no degree. Their training was recognised only to a limited extent, by the Government alone. This measure did not effectively change the pattern of access to legal education or to the legal profession, but was a temporary measure to fill a gap in certain government legal services with persons who were not offered a full legal education.

Another dimension of government action to deal with the situation was more fundamental and radical. While the Government, the University and the legal profession of Rhodesia were assiduously excluding blacks from the law, the process of liberation and preparation for a majority ruled Zimbabwe included a vigorous element of legal education and practice. Thus, at independence in April 1980, there was a significant black "diaspora" of Zimbabwean lawyers, educated in a wide range of Law Schools from Kiev to California, including a good number who had qualified as Barristers at the Inns of Court in the United Kingdom.

Under the then existing regulations for admission to the legal profession most of these "foreign" qualified lawyers would have had to submit themselves to a period of further, local, legal education and to seek admission before the High Court. The argument for maintaining that control was the historically familiar

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'maintenance of standards' one, combined with the more specific point that the common law of Zimbabwe (Roman-Dutch Law) would not have been that in which these lawyers of the "diaspora" had been educated. The new government of Zimbabwe, as its policy of Reconciliation demonstrated, was also sensitive to the need for continuity. On balance, however, the combination of the demand for change, the absurdity of the racial discrimination in the Rhodesian legal establishment and the need for qualified and politically reliable lawyers to serve the new State, decided the government to take radical steps to deal with both access to the profession and access to legal education.

This decision was concretised in the Legal Practitioners Act of 1981.¹ The Act opened the profession to Zimbabweans who had qualified abroad and had neither practical experience, nor academic training in Zimbabwe. Even this legislation demonstrated caution and readiness to compromise with the establishment, on the part of the new government. The lawyers entitled to be registered under this law were restricted to those with degrees from designated foreign countries where the common law was English or Roman-Dutch, and English was an official language. In addition, the Minister was empowered to declare that qualifications from other countries where English was an official language would be a basis for registration. The effect was that those who had qualified in most Commonwealth countries (and South Africa where many Rhodesian whites obtained their legal education) were able to practice immediately in Zimbabwe. The cautious application of this power is shown by the fact that it was only after February 1985, when it was added by Ministerial declaration, that Scots qualifications were recognised as a basis for registration. A notable result of this formulation was the fact that Zimbabwean lawyers with a legal education in Socialist States were not able to register as Legal Practitioners under this law.

ACCESS TO THE LEGAL PROFESSION

Access under the 1981 Legal Practitioners Act.

As outlined above access to the profession has, to date, been regulated by the 1981 Legal Practitioners Act. Access has involved two stages: (i) registration and (ii) independent practice, in partnership or on his/her own account. To qualify for registration as a Legal Practitioner under the 1981 Act the applicant had to show that he/she was a citizen of Zimbabwe and had one or other of the following qualifications:

- (i) the B.L. and the LL.B. degree of the University of Zimbabwe (or its predecessors),
- (ii) a foreign law degree from a designated country, plus either the LL.B. of the University of Zimbabwe or passes in (or exemption from) the Zimbabwe Local Examinations set and marked by the Board of Examiners established under the regulations,

¹ Act No. 15 of 1981, as amended by Act 32 of 1981.

- (iii) the B.L. or a foreign law degree plus admission in a designated foreign country plus passes or exemptions in the Zimbabwe Local Examinations,
- (iv) The equivalent of a foreign law degree, plus entitlement to admission in a designated foreign country, but for lack of residence and/or the lack of a pass in a language other than English, plus passes or exemptions in the Zimbabwe Local Examinations. This is designed for and is generally used by Zimbabweans who have graduated in South Africa),
- (v) admission as a lawyer in a designated foreign country plus either the University of Zimbabwe LL.B. or passes or exemptions in the Zimbabwe Local Examinations,
- (vi) Having been a Judge, Attorney General or Senior Counsel in Zimbabwe or a designated country.

Following registration, the Legal Practitioner must spend twelve months under 'practical training'. The recognised forms of such practical training are:

- (i) employment as a legal clerk or assistant by a legal practitioner of at least two years standing in Zimbabwe who has been approved by the Minister after consultation with the Board of Examiners and the President of the Law Society,
- (ii) employment as a public prosecutor or law officer in the Attorney General's office or in the Ministry of Justice, Legal and Parliamentary Affairs,
- (iii) employment involving responsibility for the examination of Deeds in the Deeds Registry Office in Zimbabwe,
- (iv) employment in such other legal occupation as is, in the opinion of the Board of Examiners, equivalent to any of the three categories above.

A revolutionary open door policy?

Thus, the reality of access to the profession in Zimbabwe under the 1981 Act is that every Zimbabwean who is qualified to enter the Faculty of Law and who graduates first with the B.L. and then the LL.B degree, is able to become a Legal Practitioner with relative ease. The significant breach in the wall of exclusivity, preserved so carefully by the private profession in league with settler governments before 1980, has been the right of all graduates of the Law School to register as Legal Practitioners. During the 1970's one of the techniques employed to keep the number of black students down to a minimum, was to advise them (not incorrectly) that the prospects of employment in private practice were virtually nil. Today the majority of graduates find posts in government which

enable them to complete the year of practical training and then, if they wish, to become independent practitioners. In fact most of the post-independence graduates who have gone into private practice appear first to have entered existing private firms to obtain specialised experience. Those who have then 'gone it alone' have been through the mill of private practice, rather than launching themselves from an exclusively public law base. Despite this fact, the overwhelming feeling among the new generation of black Zimbabwean lawyers is that they cherish and wish to preserve, the 'open door' to the profession which Cde. Minister Simbi Mubako created with the 1981 Legal Practitioners Act. At present the daughters and sons of peasants and workers who can achieve the necessary "A" Level results will gain admission, with full governmental financial support, to the Faculty of Law Degree. Provided there is a government post for them when they graduate (and to date there always has been) their access to any part of the profession is only a matter of time and a reasonable one year at that.

Access and Legal Services: an urban privilege?

The number of practitioners in private practice in Zimbabwe is still very small and very urban based. figures given in Annexure B to the McNally Report show that as at 10 March, 1986 there were a total of 261 private practitioners in the country, to be found in 65 separate firms. More than two thirds of these were partners and only 86 of them were qualified assistants. Of the 261 lawyers 210 were centered in the two main cities, Harare and Bulawayo, two thirds of them being based in the capital — Harare. There are seven other towns in the country with a total of 22 lawyers practicing in them. Again 14 of these are in the two large centres of Gweru and Mutare. Given the fact that the vast majority of the people of Zimbabwe live in the rural areas, it is clear that there is a severe, distortion in the distribution of legal services, but to date no great concern or outcry has arisen as to this state of affairs. The only attempt at an outreach or even an assaying of needs among those who are neither geographically nor financially within reach of existing services, is the experimental Para-legal project undertaken by the Legal Resources Foundation. Legal Aid is extremely limited and restricted again to the urban centres, the largest organised operation being the Legal Aid Clinic in the Faculty of Law in Harare in co-operation with the Citizens Advice Bureau. In addition a very restricted *Pro-Deo* and *Informa Pauperis* service is demanded of private practice. In this sense it is clear that a great need exists for "appropriate" legal services in the country. It is equally clear that as presently structured and financed, private practitioners cannot and will not meet this need. At present there is no research or planning being actively undertaken to analyse, much less to solve this problem. If it is accepted as a problem and is to be solved, one thing is clear, it will require many more lawyers than now exist to deal with it. Even more clearly it will require a different breed of lawyers and a much improved system of legal education to meet the need. Finally it will require a different pattern of funding.

The McNally Committee Report

Apart from these restrictions on the substantive scope of the opening of

access to the profession, there was also a time-limit built into the 1981 law. This special access to the profession was an interim arrangement which expired at the end of 1985, having commenced at the end of May 1981. In June 1985 the Minister of Justice, Legal and Parliamentary Affairs set up a *Committee to Enquire into the Qualifications for Registration as a Legal Practitioner* under the Chairmanship of Mr Justice N.J. McNally.² The Committee concluded that the "political purpose" of the interim period — "to make allowance for all those who for essentially political reasons were obliged to study abroad" had been achieved. It recommended a short extension, to 31 July, 1986, essentially to enable a number of white Zimbabweans studying law in South Africa, where final results might be delayed until the following June, to benefit from the interim arrangement. This was accepted by government.³

The mandate of the McNally Committee was not to undertake a fundamental or broad re-examination of the basic issues of access to law and legal education. It was restricted to a rather narrow consideration of two basic propositions: whether entry to the profession (especially the private sector) should be made more restrictive and be determined ultimately by the profession, or that entry be more open, based in essence upon the legal education and training offered at the University of Zimbabwe, according to criteria determined by Government and set out in legislation. The former position was supported in the main by the Law Society of Zimbabwe, representing the private profession, and the latter by a variety of individuals and organisations, including some members of the University and black lawyers in practice but outside the Law Society. Law students of the University of Zimbabwe at the time also supported the latter approach. The restrictive approach, reflecting professional control found in many Commonwealth jurisdictions, was seen by democratic lawyers (see below) as a means of potential control, or even exclusion, of entry to the private profession, of a new generation of more radical "law in context" — educated graduates of the University of Zimbabwe, the overwhelming majority of whom are also black Zimbabweans. The Committee's Final Report sought to steer a course between the two positions. It stated on the one hand that "provided a graduate (of the University of Zimbabwe) has passed satisfactorily in (required) subjects. . . we would expect him to be entitled to the Law Practice Diploma without further study".⁴ In the same vein it stated that "the University should remain the primary source of public legal education in Zimbabwe. It provides such education to every qualified Zimbabwean, at the expense of the State. This education has been and must continue to be designed to ensure both the academic excellence and professional competence required by all sectors of the legal

² The Committee had eight members, six including the Chairman, and one of the University representatives originating from private practice, one from the Attorney General's office, and one other public lawyer.

³ See paragraphs (i) and (ii) of Statutory Instrument 360 of 1985.

⁴ Para 5.5. p. 8. The Practice Certificate (or exemption) was to be awarded by the proposed Council of Legal Education.

profession. In order to do this, the requirements of each sector, including private legal practice, should be available in clearly laid down and published criteria, so that the University can offer a programme to its publicly funded students, which will ensure their competence for admission to any sector of the profession. In relation to the private sector this will mean that the Council of Legal Education (which the Report proposed be set up) *will grant exemptions* (emphasis added) *from the examinations for the Law Practice Diploma on the basis of such criteria to law graduates with appropriate passes*".⁵ But on the other hand, it stated that "it is (not) right to expect the Law Department (of the University) to be the sole arbiter of what training is needed by a legal practitioner".⁶

Ultimately it recommended that Government should set up a new supervisory body, (the Council of Legal Education — C.L.E.) which in the final analysis should have (through its power of exemption) the right to judge all University legal education, and if it so decided, to require additional training of graduates (including those from the University of Zimbabwe) before their admission as *private* legal practitioners.⁷

The Final Report of the McNally Committee was submitted to the Minister in March 1986 with the recommendation that new regulations for entry to the profession be brought into force in January 1987. It is a measure of the controversy generated by the issue of access to the profession and the Report that the Government of Zimbabwe took more than two years to act upon the matter. In the interim a new Minister (Cde Emmerson Mnangagwa) has replaced the Minister (Cde. Eddison Zvobgo), who appointed the Committee and received the Report. An interesting development, arising from the concern generated by this public discussion of an issue one might assume to be essentially the preserve of the legal elite, was the emergence of an organisation of radical lawyers(in public and private practice as well as in academe) demanding a more explicitly democratic dispensation in the law, legal education and access to the law in Zimbabwe.⁸ The debate generated a combination of radical and nationalist sentiment which required government to give long and careful consideration to the implications of unqualified acceptance of the McNally Report.

⁵ Paragraph 5.6. p.9

⁶ Paragraph 5.6 p. 9

⁷ The C.L.E. would be in the classic mould of an "independent" body, consisting of a Board of Trustees — to decide policy — and a Board of Management to implement it. The Trustees would be: The Chief Justice, the Secretary for justice, the President of the Law Society. The Board of Management would consist of a chairman appointed by the Chief Justice, being a Judge of former Judge, and four others appointed by the Trustees: one nominated by the Minister of Justice, Legal and parliamentary Affairs, one by the Law Faculty of the University of Zimbabwe and two by the Council of the Law Society of Zimbabwe. (Paragraph 8.1.1 to 8.1.3.)

⁸ This organisation is the Zimbabwe Association of Democratic Jurists (ZADJ).

Restrictive access re-asserted

In this context it is necessary to consider again the representations made to and the recommendations of the McNally Committee on qualification for registration. These excited critical comment among many black Zimbabwean lawyers, most of whom do not yet enjoy a place in the highest financial echelons of the legal elite. On the one hand the Committee took note of the plans of the University to integrate its legal education in the new LL.B. (Hons.) degree and to improve its 'product'. It expressed the view that "the University should remain the primary source of public legal education in Zimbabwe". It noted that such education was available "to every qualified Zimbabwean, at the expense of the State". But while it expected each sector of the profession — including private practice — to make clear their needs, so that the University education could provide for them, it concluded that the existing law, which automatically bestowed the rights of access upon the LL.B. graduate of the University of Zimbabwe, should be modified. In place of the legislatively pre-determined criteria for admission (the LL.B. degree, and one year of supervised practice), it proposed that a discretionary test for, and thus ultimately control of admission, be placed in the hands of a Council for Legal Education. This body, "in relation to private practice" would be empowered to grant exemptions from further training and examinations (and thus effectively grant access to the private sector of the profession) to graduates from any University. Where exemptions are denied, the graduate would need to undergo further training and testing for the Law Practice Diploma and entry into the private profession. It recommended that such training be made more easily available to those who are able to gain employment in the private sector, through a system of subsidy to the employer.⁹

Criticism of these recommendations concentrated first upon the attempt to retreat from the established 'open door' (after five years of education and training) to the profession both public and private; second upon the selection of the private sector for this restriction, and third upon the power to be placed in the hands of a non-government (though government established) Council. It is interesting to note the critics' preference that control remain in the hands of the broader democratic and politically responsible Parliament rather than the specialist and expert hands of a Council made up of the Chief Justice, the secretary for Justice, the President of the Law Society, the Vice-Chancellor of the University, the Attorney-General and the Secretary of the Law Society.

The debate surrounding this issue may be seen as an interesting microcosm of political and ideological developments in Zimbabwe since 1980. What is perhaps unusual is that the issue which was so publicly debated was the usually essentially private and professional question of access to the legal profession. The admittedly radical steps taken in 1981 could be explained by the fact that discriminatory restriction upon entry to the legal profession, normally managed by more subtle class processes in developed capitalist societies, was crudely and overtly racial in colonial Rhodesia. In Zimbabwe at independence this clearly had to be changed. The articulate and dominate ideology of the Liberation

⁹ Paragraph 8.3.

Movement-based government in 1980 was however more than merely nationalist and anti-racist, it was explicitly democratic and proclaimed itself to be responsive to the interests of the working class and peasants. Thus, in addition to the *ad hoc*, once and for all time, opening up of the white legal professional monopoly to existing qualified black Zimbabwean lawyers, there was introduced an unusually comprehensive and structured system to ensure both legal education and access to the profession, for all qualified Zimbabweans, both immediately and for the future. The elite black legal diaspora (who had been the direct victims of past discrimination) would benefit for a limited period to allow "re-entry", but so (subject to equality in general education) would young Zimbabweans from all classes be protected from future temptations to re-introduce professional exclusivity.

Why then by 1985, when the temporary exemption ended, was it possible or necessary to re-examine and challenge the principle of open access to the Zimbabwean legal profession? (In passing one might note that in such a "conservative" neighbour as Botswana, access to the profession for the local graduate is essentially open). Why was it that a call by sections of the profession who had silently accepted the 1981 Act, for a return to "the good old days" (and even Articles) was able to be articulated so unambiguously in 1985? One reason frequently but vaguely given, was that the post-independence graduates had proved themselves less capable than their colonial counterparts. In view of the "vague and embarrassing" nature of these allegations, it was never made clear whether the cause of such incapacity, if any, was their preparation at University, the context in which they spent their one year of supervised experience or some other factor. This charge can be distinguished from the different point, agreed to by all sides in Zimbabwe, that legal education and training must be improved. The former complaint specifically harkened back to the "need" for Articles and control of entry to private practice by the profession. It was noted but not specifically evaluated by the McNally Committee, which did however expressly reject the reintroduction of Articles.

Another possible reason for the assertive questioning of inclusive access to the profession, comparable to developments emerging in other spheres of Zimbabwean life by 1985, was that the State was somewhat distanced from the democratic demands of the "liberation era", and felt a greater need to listen to the "establishment" with which it was now much more at ease.

Whatever is the explanation, what emerges from the events of the past three years relating to the problems of legal education and access to law in Zimbabwe, is the fact that, even in this unlikely corner of social interaction, the struggle (for justice and equality) continues!

Dialogue and compromise: Open access preserved?

In 1988 the Minister of Justice Legal and Parliamentary Affairs made a statement indicating the outlines of the government's decision on access to the profession. In essence it has decided:

- (i) that the LL.B degree of the Faculty of Law at the University of Zimbabwe will be the basic qualification required of all persons who wish to enter the practice of the legal profession.
- (ii) that students of the LL.B degree may or may not choose options to qualify them as legal practitioners.
- (iii) that accordingly a professional body, set up by the Minister (the Council of Legal Education) would set examinations for persons who do wish to become Legal Practitioners, but that University of Zimbabwe LL.B graduates ("depending on what subjects they passed at the University") will be exempt from all or some of such examinations.
- (iv) that for unexempted graduates, those with legal qualifications or with degrees of Universities' other than the University of Zimbabwe, the Council of Legal Education will provide twice yearly examinations and courses (though attendance at these would not be compulsory).
- (v) that those who have passed (or been exempted from) the professional examination could be enrolled as Legal Practitioners, and (as under the existing requirements) be permitted to practice as a principal after twelve months service under "an experienced legal practitioner."

The final implementation of this policy decision will require clarification of some important details. Most important for access to the profession will be specification of the optional subject in the University of Zimbabwe LL.B (Hons) degree which a graduate must have passed to obtain exemption from the Professional Examination. If the "openness" to all Zimbabweans achieved by the 1981 Act is to be retained, both the University and students must know in advance what these subjects are. The new LL.B. degree, introduced in 1988 was designed to provide for this situation.

The other vital element, which secured access to the private profession for many Zimbabweans who might otherwise have had to spend their careers in public practice until they were lucky enough to be employed in the private sector, is the "L-Plating" period (as it is referred to in the McNally Report) under "an experienced legal practitioner". The Minister's statement makes no reference to one or the other sector of the profession but his reference to "no change to the current requirement of service" seems to confirm that the existing ability to serve this period in the public sector is intended to be retained.

Such clarification will, it is hoped, be set out clearly and authoritatively in Regulations to a new Act to replace the 1981 Act in due course.

PRE-INDEPENDENCE ACCESS TO LEGAL EDUCATION

Until 1965 Attorneys and Advocates, the two branches of the Southern Rhodesian legal profession, were largely educated in Universities in South Africa or the United Kingdom, and subjected to a local examination (Advocates) or a period of articles and local examinations (Attorneys) before admission. Attorneys could also qualify for practice without a degree, after serving a longer period of Articles and passing a series of approved examinations. Most public lawyers serving as magistrates and prosecutors, qualified by way of public examinations, but law graduates were also employed. In 1965, the first formal teaching for a law degree was offered at the University, (which had been opened in 1953). The degree was the LL.B in Roman-Dutch law of the University of London. Local graduates were in the same position as graduates from outside the country, required to do either Articles or the Advocates qualifying examination. In 1977 the Department of Law at the University introduced a one year course leading to a degree, entitled LL.B, which was recognised as an alternative qualification for admission as an advocate. Earlier, in 1972, the London LL.B. had been replaced by an entirely local law degree — the Bachelor of Law, known in its abbreviated form as the B.L. The curriculum for the B.L. followed exactly the subjects offered for the London LL.B., with students consuming the rather heavier diet, than the LL.B at the University of London, of five courses in each of the three years, and examinations at the end of each year. The examinations were moderated and supervised by a single external examiner. Until 1982 this examiner had always been from a Faculty in the United Kingdom. Since then the external examiner has been from Kenya (Professor Okoth'Ogendo), Mozambique (Professor Albic Sachs), and Dar es Salaam (Professor Joe Kanyiwanyi).

Access to Legal Education at the 'Non-racial' University College of Rhodesia

Admission to the University College of Rhodesia, was formally open to all races. Until 1980, however, the number of black law students was small and always less than the number of whites. The staff included no blacks until after independence.¹⁰ The formal basis of admission was performance in the "A" level examinations of one or another of the United Kingdom Examinations Boards. During the pre-independence years the Law Department, in common with other parts of the University, experienced political tensions between students (especially black students) and the authorities. A number of black students were forced to discontinue their studies during the 1970's, several of them leaving to join the National Liberation Armies.

The reality of "Non-racialism" at the University is poignantly illustrated in an editorial by the Head of the Department of Law in Volume 2 (1969) of the *Rhodesian Law Journal*. In a plea to the profession and government to employ

¹⁰ Note however that Dr A Mutiti joined the staff in 1979 and left the same year to become a Minister in the ill-fated Muzorewa government, P. Machaya was employed as a part-time lecturer to teach Customary Law, then called African Law

more black graduates, the editor (disarmingly describing himself as a "disillusioned reactionary") expressed the following views:

"(L)ack of flexibility and originality of mind . . . is almost the only cause of failure amongst (black law students)".

"Africans as a class (sic) find it more difficult than non-Africans as a class to make the transition from school work to a university law course", and

"(T)he tradition of forming and expressing an independent judgment seems markedly less strong among Africans than among Europeans".

Not surprisingly, the plea apparently resulted in no increase in the willingness of either private or public sector to employ black law graduates.

ACCESS TO LEGAL EDUCATION SINCE 1980

Independence brought an explosion in admissions to the University, including the Law Department. In 1980 ninety students were admitted to the B.L. programme. The criterion for admission remained, as it does today, a minimum of points based upon "A" level results. When University policy demanded that larger numbers be admitted it was found that it was not necessary to fall below 7 points (on a E = 1 to A = 5 scale) to fill the places. Policy in the University set academic merit, based strictly upon the "A" level mechanism, as the basis for admission. No special compensatory or reverse discrimination was allowed. Thus no special quota was set for women students or other special groups. In fact the result of simply enlarging the intake and removing other barriers was a dramatic change in the racial ratio of students studying law. Since 1980 well over 90% of the student intake has been of black Zimbabwean students. In spite of all the distortions of the colonial education system the secondary schools, (government, private and mission), produced an "A" level output which filled the rapidly expanded capacity of the single national University. In 1988 this output has reached a point where the number of qualified school leavers is greater than the potential intake of the University. The sexual bias, abolished in law but dominant in the social practice of a still transforming society is discernible in the intake of Law; but the percentage of women has in general risen since 1980 and stands at 25% for the class of 1988.

Class and colour were generally coincidental in the colonial period. There emerged, during the 1970's, a growing black middle class, though it was still physically 'lumped-in' with the black working class and peasantry by the Rhodesian system. This situation has altered quite dramatically since 1980, and a significant black bourgeoisie and petty-bourgeoisie now exists, especially in the main cities of Zimbabwe. One educational dimension of this, combined with a determined government policy to spread non-racial and egalitarian public education, has been a significant rise in the number of places available in private schools in Zimbabwe. The private schools appear to be as popular with the new

black elite as they are with wealthier whites who have always considered education to be the critical guarantee of success, if not supremacy. There is, as yet, no overall survey available of the working of the present admission policy of the University in the context of the evolving class structures in Zimbabwe. Governmental support for university students is generous and open to more or less all candidates admitted. In addition, the reality of the extended family may make such research more complex. An uncle, or an elder brother or sister with a decent job in Zimbabwe has as clear an obligation to finance a younger relative's education as a parent in other societies. On the face of it a high proportion of law students are still from homes where the father is a worker or peasant farmer. The point however may soon be reached where the proportion of students from a bourgeois background will be disproportionate to the population. At present no policy to deal with such a situation has been evolved, but given the breadth of secondary education available and the motivation of pupils it may be reasonable to hope that high academic entry qualifications will not result in a predominance of admissions from pretty bourgeois backgrounds. The case of the white students, essentially from such background, gives some credence to this assumption. It is worth noting that part of the dramatic change since 1980 in ratio of students admitted, in terms of race, may be attributed to the fact that many white Zimbabweans study in South African Universities. The Zimbabwean Government has been generous with the foreign currency allowances needed for such study, provided the student could show there was no place available for her at the local University. The fact is that admission to South African Universities is based upon the five years secondary schooling, South African Metric examination, rather than the six year "A" level qualification. Thus, some white Zimbabwean students who would not be qualified for admission to the University of Zimbabwe Law School and whose parents can afford it, have their legal education outside of Zimbabwe. Thus at this stage, it would appear that socio-economic class does not determine one's access to legal education in Zimbabwe.

Current Admission Practice

In 1988 the newly established Faculty of Law replaced the former Department of Law in the Faculty of Commerce and Law. The intake of students for the 1988 session was 87 students. This is slightly more than an ideal, predetermined number based upon the library space, staffing and practical workshop space available. The places offered went to students whose first choice of subject was Law, and who achieved a minimum of 9 points at "A" level. Some, about 10%, are mature entry students. They are largely from the public service (Police and Zimbabwe National Army in particular), supported by their Ministry, and have passed a Mature Entry examination set by the University. It is a matter of policy that the Faculty offers a quota of places to mature students. The record of such students in Law is good, and their contribution to the quality of the student body is positive. In addition the Faculty seeks, as a matter of policy, to offer about 5% of its places to students who are refugees from South Africa and Namibia. The admission of non-Zimbabweans if governed by a clear governmental policy which emphasises the primacy of places for local nationals, and requires

governmental authority for the admission of foreign students. In practice the foreign students admitted are those supported by the relevant Liberation Movement of South Africa and Namibia.

This year (1988) the Faculty introduced a new four year degree — the LL.B. (Hons.). Thus until the end of 1989 there will be three undergraduate programmes running in the Faculty: the B.L, the LL.B.(Hons.) and the one year LL.B professional qualification. The last of these will be phased out as the final step for qualification for registration as a legal practitioner, but a final date for this has yet to be determined.

Access to Professional Training

Admissions to the LL.B professional course in 1988, was 67 students. This is largely determined by the B.L. graduating class, which has a right to admission (59 in 1987), and the space and staff available for a programme involving 10 taught courses and a compulsory and assessed participation in a Legal Aid Clinic. As will be seen below, this degree is the normal means for young Zimbabweans to enter the profession. For two years after independence the programme remained very small and racially unrepresentative. For some reason it was categorised by the University as a postgraduate programme. Under Ministry of Education regulations financial supports for a postgraduate degree requires a minimum 2(i) first degree, and a specific application for a government scholarship. The result of this was that between 1980 and 1983 many black B.L. graduates did not proceed to the LL.B. When it was pointed out to the Ministry of Education that the LL.B. was an essential qualification for a B.L. graduate to become a practicing lawyer, it was immediately agreed that all B.L. graduates be given support as of right. One result of the 'oversight' in 1981 and 1982 is that the graduates of those three years, together with those who failed and have had to repeat the programme and Zimbabwean graduates of other Law Schools who wish to obtain the professional qualification, must still seek places on the LL. B degree course.

Failure Rates

The failure rate on the B.L. programme since 1983 has been about 3% overall. Given the increasingly high level of entry qualification this is expected to remain low or be reduced. Students must pass all subjects to be able to proceed to the following year. The same policy will apply to the new LL. B(Hons.) degree. Students who have failed have in most cases been allowed to repeat the year, reducing the actual casualty rate to virtually nil. The same has not been true of the LL.B programme, which has suffered from the fact that it was introduced with too little thought and advanced planning. An overall failure rate, after supplementary examinations, of about 8% has beset it since its extension in 1981. A particular feature has been a particularly high rate of failure in the Book-keeping and Accounts course. To deal with this, the policy was adopted that a student would be entitled to repeat this particular examination as often as necessary until he/she passed it. More comprehensive failures may require the students to repeat the programme or the examinations only, or to re-apply after

a two year period for re-admission to the course. This last option can be difficult since there is a limit on places, and pressure since 1983 has been intense. To deal with this it has been the policy to give preference to students who have not previously attempted the degree, and as regards those who are repeating, to prefer those who are in government service. The LL.B has also been the means for students seeking lateral mobility to qualify for practice in Zimbabwe. For those who have no practical experience elsewhere and a foreign degree, it is the only means of qualifying for registration. Given the fact that non-citizens are not entitled to be registered and the fact that few Zimbabweans now study for undergraduate law degrees abroad, except in South Africa, there have been very few, if any, such students in the past three years.

THE NEED FOR PART-TIME AND EXTRA-MURAL LEGAL EDUCATION

One problem which needs to be mentioned is the widespread demand in Zimbabwe for part-time and extra-mural study for a law degree. At one stage in the late 1970's students were admitted to an extra-mural course provided by the Department of Law. Candidates were mainly legal civil servants wishing to obtain the B.L. degree. Tuition consisted of recordings of lecturers' live lectures, taped tutorials and marking of students' essays by the full-time faculty at the Department. A high percentage of failures occurred, and the teaching was not seen as an effective use of time by the academics. The programme was stopped at independence. Had it been continued it would have been overwhelmed by would-be students. At present a good number of Zimbabweans undertake legal studies extra-murally with UNISA in Pretoria (despite a requirement for Afrikaans as a subject) or with the University of London. One problem they face is foreign currency which is needed to pay for these courses and is short in Zimbabwe. Some of those demanding a local extra-mural programme are the prosecutors, magistrates and presiding officers who went through the special courses in the early 1980's and who now face severe obstacles to promotion without a degree. The university has given consideration to the idea of an extra-mural degree, but has made no recommendations. The view of the Faculty of Law is that this is an urgent national need, which should be met. It is convinced, however, that proper facilities in terms of library and tuition must be provided and that this should not be a 'second hand' course provided by tired tutors after hours.

The only para-legal system in Zimbabwe at present is the very limited experiment being conducted in the Harare and Bulawayo centres by the Zimbabwe Legal Resources Foundation. No consideration has yet been given to providing any further training for such persons beyond the present experiment.

THE CURRICULUM

Law in Context

Since 1982 there has been a policy in the University to teach law in a critical perspective, and in the economic and social context of Zimbabwean realities.

This contrasts sharply with the explicitly commercial and black-letter approach before that time, well represented by the fact that law was taught in the Faculty of Commerce and Law.¹¹

The isolation of Rhodesia from world developments and the strongly anti-intellectual traditions of the colonial era have combined to give the new 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. This particular tension, has also however been common in other jurisdictions where "law in context" has been introduced during the past twenty years. It has perhaps been emphasised in Zimbabwe by the coexistence and juxtapositioning of a governing party which describes itself as Marxist Leninist, a policy of Reconciliation, and an economic structure dominated by foreign capital and controlled largely by the same community which held sway under the Rhodesian Front. The legal system, with important changes in the area of family law and certain constitutional rights, is a perfect microcosm of these contradictions, and remains largely unamended. This is particularly true in the field of economic law.

The University is committed to making itself the University of Zimbabwe rather than the University merely *in* Zimbabwe. Transformation has been a major theme since 1980. In these circumstances the Faculty faces a considerable challenge. Does it teach the law as it is, or does it approach the law and its teaching in a way which looks forward? Since 1982, it has chosen the latter course. The process, however, has had several built-in problems, particularly the qualifications and perspectives of the existing teachers. In 1982 expatriate lecturers were still necessary, and a majority of the teachers were not only white but many were inherited from the colonial past. Thus a thorough-going curriculum change was not possible. Those who could, and would, taught their subjects in an economic and social context. A few adopted an explicitly Marxist approach. But until 1988, the subjects in the curriculum have remained in broad terms, the same as they were in 1980. The essential prerequisites to fundamental change are staff development and careful recruitment. By 1987 the balance of academics had been changed and a majority of the staff consisted of post-independence Zimbabwean graduates who had gone on to complete a minimum of post-graduate studies, to at least Masters level. A variety of new resources had been used, including an invaluable and imaginative contribution from the Faculty of Laws of the University of Oslo. With this new manpower base it has been possible for the Faculty to move, as it is doing, to a new degree structure and to contemplate further curriculum development and the introduction of post-graduate studies.

The Integrated LL.B (Hons) Degree

The objective of this new degree is to produce a better and more useful law graduate in Zimbabwe. The degree is described as 'integrated' to contrast with

¹¹ However, note must be made of the fact that the Department of Law was originally in the Faculty of Social Studies.

the former dichotomy between the “academic” (substantive) B.L. and the “practical” (procedural) LL.B. The faculty was convinced that in a developing country such as ours we could not afford to have allegedly trained lawyers who knew nothing of how the law can be made “to work”. It was also the view that a knowledge of the substantive law would be improved by an awareness of the remedies within the system. Apart from these considerations there was a real need to change the inadequate structure within which the Faculty has had to teach procedural law — namely the old LL.B.

Unplanned Skills Training

It is appropriate at this point to explain the origin and nature of this “old” LL.B degree. It was originally introduced to replace the Advocates admission examinations. In 1981, the Legal Practitioners Act abolished the distinction between Advocates’ and Attorneys and created a single profession, all to be called Legal Practitioners. One result (largely unplanned for and in no sense — of either staffing or resources — provided for) was that the Department of Law was expected to provide — at the drop of a hat — a single and comprehensive training system for this new professional. This was to be done by grafting the additional training needed for the formation of the skills of the attorney, notary and conveyancer onto the courses designed for the advocate. The advocates’ simple book-keeping needs would be supplemented by training for the more critical skills needed by the Legal Practitioner to maintain Trust Accounts. All this was done at a few months’ notice. A heavily over-burdened course has had to be taken in an effective eight months by the B.L. graduate, and this is expected (subject to one year of ‘supervised’ practice after registration) to produce a practitioner as skilled as a graduate who had spent two years Articles in an attorney’s office. The remarkable fact is that in many cases this objective was achieved. As a result between 1982 and 1987 a significant group of black lawyers from a wide range of class backgrounds and an exposure to critical legal education, have entered the profession, both public and private. But it was at a price, in terms of dissatisfaction and frustration for the LL.B students and teachers, as well as a distorted conception of the law and its various dimensions.

Thus in 1983 the then Department of Law began seriously to seek a new structure for its teaching and a new curriculum. In the same context it pressed for the establishment of a separate Faculty of law within which to achieve its purpose. The outcome, in 1988, is a new Faculty, with three Departments — Private, Procedural and Public Law — and a Legal Aid Clinic under the Faculty. In addition the new LL. B (Hons), was introduced.

There was some indications of change in the programme: the integration of substantive with procedural subjects, the concentration in the fourth year upon Clinical work on the one hand and a considerable dissertation on the other. New subject options such as Women’s Law have been introduced, and the (still being negotiated) plan for attaching students during their second and third long vacations, to work situations of first, public and then, private legal practice is an essential new ingredient. But the success, or otherwise, of the new degree will

only be clear as graduates emerge into the real world. Will they be the better lawyers they are planned to be? Will they be prepared as lawyers to press for the changes their critical education has sensitised them to? Or will their values and ambitions on leaving University be adjusted, from concern for non-discrimination, service to the underprivileged, defence of national resources and the fundamental need for structural change, to concern for their first Mercedes Benz as the hallmark of their being a "real" lawyer? Whatever they become, the Faculty is determined to show that critical law graduates can also be credible and efficient lawyers. At the end of the day that is one practical means of ensuring their access to the profession, and thus the access of the population to good, concerned legal service.



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