The future of law faculties

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Some years ago, when I was a law lecturer at the University of Cape Town, I attended something called the All-Africa Human Rights Moot Court Competition, in Uganda. These competitions, which are held annually, bring together students from many African universities to argue a fictional case in the area of human rights. At Entebbe airport, I got chatting to a participant from Vista University. He told me with some pride that Vista had gone through a stringent internal moot-out process across its various campuses before electing him and his mooting partner as its representatives.

After the first round of the competition, he became despondent to the point of despair, and withdrew from further participation. He was a bright young man, and it had been brought home to him with startling clarity that the education he had received, at both school and university level, was so poor that he simply could not compete with students from Botswana, Zimbabwe, Uganda and so on.

A similar shock almost invariably awaits law students with good marks from universities such as Transkei and Venda and the North whenever they transfer to a university like Cape Town: they find themselves, distressingly, at or near the bottom of the class. (This is not to imply that one might not, sometimes, find a student so exceptional that she is able to overcome such disadvantages; or that there are no good academics at the "historically black" universities. But they are scattered thinly.)

Even if the situation at such institutions could be significantly improved by vast amounts of additional state funding – which is to be doubted – the financial wherewithal to do so is lacking. So, probably, is the need, given much reduced numbers of applicants for university places over the past few years. It seems evident that Kader Asmal would be doing the right thing were he to close down a number of these depressing tertiary institutions. It is unconscionable to pretend to students that, in exchange for all that money and all that time, they are receiving a worthwhile degree when it is not the case.

In what follows, I therefore concentrate on the situation at the better universities. The discussion is perforce impressionistic and anecdotal, and drawn from my own limited experience at UCT.[1] It seems to me, then, that the principal difficulties faced by law faculties may usefully be considered under two headings: funding and "transformation".

Lack of money is a problem for universities generally, but it is particularly acute in vocational disciplines such as law, where lecturers have the option of joining a profession readily available to them. It used to be the position that professorial salaries kept abreast of judges' remuneration, but they have now fallen way behind (and judges will tell you that *their* remuneration is not all that hot). Increasingly, universities are encouraging their academic staff to earn income on the side. I tried it for a while: it stretches one very thin at either end, and what inevitably gives is academic research.

Research time is also reduced by the importance that is now, of necessity, attached to fund-raising by faculties.

Academics are finding their own answer to the situation: they are leaving the hallowed halls. Off-hand, I am aware of six law professors who have taken up judicial appointments in the past few years (although I have no idea whether financial considerations were a motivating factor in any particular case), and of numerous other legal academics who either have joined or are in the process of joining the profession.

The financial pinch is felt very acutely, also, by the university libraries, which are compelled continually to cull book and journal purchases as a decreasing budget meets an increasing foreign exchange rate.

Transformation

The second major problem facing law faculties is the drive towards "transformation." I do not know whether there is a word to describe a person who is the opposite of a Luddite, but "transformation" is undoubtedly the blunt instrument which is wielded by such persons in this country: make everything new.

Thus, under the rubric of "transformation", universities have imposed "programmes", which is a short-hand way of saying that learning and scholarship for their own sakes are out, vocational training is in. (Fortunately for law faculties, they tend to be regarded as already offering a "programme".) Top-down management, with the concomitant side-lining of the senate at university level and of the academic staff at faculty level, is all the rage. (It is a remarkable thing that the term "transformation" carries with it so much moral force that it overcomes even justifiable accusations of Thatcherism.)

White male academics are, in both the appointment and promotion process, at a distinct disadvantage, beyond that which would be justified on any meaningful theoretical approach to affirmative action. There is also an error in thinking, here: if a clever person is prepared to spend many years working very hard to produce three fine volumes on South African company law, when he could have been earning a comparative fortune in the corporate world, embrace the man! (The JSC keeps making the same error with regard to the attractions of being a judge, with predictable consequences.)

Also in the name of "transformation" has come the truly bizarre imposition on law faculties of the four-year, undergraduate, LLB degree. Our matriculants are by and large poorly educated – so we *reduce* their tertiary education by a year?

There is also a tremendously positive aspect of "transformation": the student bodies at universities that have historically educated largely, and in some case exclusively, white students have changed a great deal. When I first went to UCT in 1979, there were a handful of black students in my class. Today black undergraduate students are in the majority in the law faculty.[2] But perhaps this fact underlines the difficulties. It seems somehow unfair in these times that students should receive one year less legal training than did my overwhelmingly white class. It seems unfair, also, that

overall their law teachers are not – and the generalisation seems to me to be a justifiable one – as good as the law teachers I and my class had.

So, for various reasons, law faculties find themselves in a very difficult situation. When some good academics leave – perhaps for financial reasons, perhaps because they cannot pursue their research interests without access to international journals – then other good academics follow, simply because it is no longer much fun being there without your intellectual peers.

Does any of this matter to legal practitioners? Self-evidently, if only for the most selfish of reasons. Poor graduates (and I have no difficulty in assuming a general correlation between good legal academics and good law teachers) result in a weakened profession, and a loss of public confidence in our ability as practitioners to facilitate the sensible resolution of disputes.

More narrowly, we receive less benefit from the academic output of law faculties, in the form of textbooks and journal articles. The last comprehensive book on administrative law predates the *Traub* judgment. (When last heard of, Lawrence Baxter was gainfully employed as a banker in the United States.) The leading constitutional law books are hit-and-miss affairs, written by people with too little time. It is striking to note, for example, that of the six editors of *Constitutional Law in South Africa*, only one is a full-time academic. We await the author of a new edition of volume 1 of Boberg on *The Law of Delict*, and of volume 2 of the fifth edition of Cowen on *The Law of Negotiable Instruments in South Africa*. And so forth.

Hope lies in the government having the political will to follow through on the proposal of reducing the number of universities in the country. It will mean that student enrolment becomes more competitive; that there are more academics applying for fewer positions; and that a great deal of additional funding becomes available for those universities, and law faculties, that continue in existence.

Endnotes

1 I take comfort from the late great physicist Richard Feynman's description of educational theorists, and social scientists generally, as practitioners of "pseudoscience" – which means that the anecdotal is probably as good a basis as any for analysing law faculties. Richard Feynman *The Pleasure of Finding Things Out* (Cambridge, Mass: Perseus (1999) 242 and elsewhere. See also Thomas S Kuhn *The Structure of Scientific Revolutions* 3 ed (Chicago and London: University of Chicago) (1996) 15.

2 Njabulo Ndebele "Opening a new window" in *UCT News* vol 27 (Dec 2000) 17. 🕮

Kaapse Balienuus

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Traverso ARP

Bygedra deur Theoniel Potgieter, Kaapse Balie

Die nuwe adjunk-regter-president in Kaapstad, regter Jeanette Traverso, is al gewoond daaraan om geskiedenis te maak. Sy is die eerste vrou in dié pos. Sy was ook die eerste vroulike lid van die Kaapse Balieraad en maar die tweede vrou wat op die Suid-Afrikaanse regbank aangestel is.

Regter Traverso se aanstelling as adjunk-RP geld van die begin Februarie vanjaar af. Die pos was vakant sedert 1 Mei 2000 toe haar voorganger, regter John Hlophe, as regter-president van die Kaapse Provinsiale Afdeling aangestel is.

"Ek sien uit daarna om in my nuwe pos met die RP saam te werk," sê regter Traverso. "Ek en hy kom persoonlik baie goed klaar en ek het groot agting vir die manier waarop hy sedert sy aanstelling hierdie afdeling se sake gehanteer het."

"Ek hoop om in my nuwe pos my goeie verhouding met die Kaapse Balie voort te sit," sê sy, en voeg met 'n vonkel in die oog by: "Ook met die junior Balie: ek hoop hulle bly bang vir my!" Sy meen daar moet meer geleenthede wees waar lede van die regbank, die Balie en die prokureursprofessie informeel kan verkeer en mekaar beter kan leer ken. Sy beklemtoon dat haar deur altyd vir advokate en prokureurs oop sal wees.

Die belangrikste vereiste vir 'n goeie regter is die vermoë om empatie te kan hê met mense uit alle lae van die samelewing, sê regter Traverso. "'n Mens moet die 'common touch' behou. Ek is baie bewus van hoe bevoorreg my lewe was en ek wil nie hê dit moet my verwyder van die lewe van gewone mense nie."

Toe sy 26 jaar gelede lid van die Kaapse Balie geword het, het 'n senior kollega haar gewaarsku dat daar geen toekoms vir 'n vrou in dié professie is nie. Dit het haar geïnspireer om deur die jare die belange van die vrou te bevorder waar sy kon, sê sy.

Regter Traverso is sedert 1999 al nie meer die enigste vrou op die Kaapse regbank nie. En onlangs is nog 'n stukkie geskiedenis gemaak toe sy en Van Heerden R twee lede van 'n volbank was: die eerste keer in die Kaap dat vroue 'n "meerderheid" in so 'n span vorm.

Regter Traverso, dogter van die politikus Blaar Coetzee en die aktrise Twinkle Hanekom, is op 28 Mei 1946 in Johannesburg gebore. Sy het haar regsgrade op Stellenbosch behaal. Sy het aanvanklik in die joernalistiek belang gestel en is inderdaad as verslaggewer by *Die Burger* aangestel nadat sy daar vakansiewerk gedoen het. Maar haar politieke bedrywighede op die Stellenbosch-kampus was vir dié koerant te embarrasserend "links" en sy is gevra om liewer nie te kom nie.

Sy is op 4 Junie 1969 toegelaat as advokaat. Ná ses maande as aanklaer in die landdroshof is sy na die Prokureur-generaal se kantoor tot 1972. Toe het sy 'n paar jaar lank "kinders grootgemaak" en op 1 Desember 1975 is sy toegelaat tot die Kaapse Balie. Sy het op 8 Mei 1991 SC geword. Nadat sy in 1993 'n slag as regter waargeneem het, is sy begin 1994 permanent op die bank aangestel.

Regter Traverso is 'n kranige drawwer en het al drie keer die Comrades voltooi (een medalje). Deesdae speel sy gholf wanneer sy kan. Haar man, Eric, was 'n bekende Kaapse prokureur en is twee jaar gelede ná 'n ernstige siekte oorlede. Sy het twee kinders, 'n seun en 'n dogter, wat albei in die sakewêreld is.

Sien ook die rubriek "New judges" op bl 21 van hierdie uitgawe – Redakteur. 🕮