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Goals and Objectives of Law Schools in Their Primary Role of Educating Students: South Africa-The University of Cape Town School of Law Experience

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INTRODUCTION

This paper examines the goals of law schools in their primary role of educating students, and the implications of the changing conditions in

1. This paper is a revision of the paper that I initially prepared for the International Association of Law Schools Conference in Canberra (May 25-27, 2009). It has also drawn from the paper on 'The Role of Culture in Teaching about other Legal Systems' that I prepared for the International Association of Law Schools Academic Programme in Montreal (May 30, 2008). This was also the basis of my discussion on the panel moderated by Professor Louis Del Duca on 'The Role of Law Schools and Law School Leadership in a Changing World' at the Association of American Law Schools Annual Meeting Program on Transformative Law in New Orleans (January 6-10, 2010).

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the legal and business world for these goals. Hereafter, unless otherwise indicated, "school(s)" will be used instead of "faculty(ies)".

I would argue that there is no uniformity among law schools with regard to the purposes for which they educate students. The definition of a school's goals and objectives is influenced by factors peculiar to its own circumstances. Furthermore, the goals of a law school are potentially dynamic. They may change from time to time in response to national and international changes affecting the school in its own local setting, such as a country's political history or economic-development needs.

Equally important to the school's goals are successive strategic plans of the University or other institution of which the school is a part. These strategic plans often have implications for the faculty's goals and the curriculum, as well as the teaching of courses in the faculty. Ideally, a change in a university's strategic plan and goals would require corresponding change in the individual faculties' missions and goals, in order for the mother institution to ensure that its faculties implement its strategic plan(s).

However, the changes in the legal environment in which law graduates work seem to increasingly call for law schools across the world to consider common goals and objectives in educating lawyers without, of course, neglecting local legal educational needs.

The aim of this paper is three-fold. The first aim is to briefly expose the diverse conditions that might influence the definition of a Law School's goals and objectives in African contexts. The second aim is to discuss the goals of a specific Law Faculty, the Faculty of Law at the University of Cape Town (UCT), in order to gain more insight into the relationship between local conditions and the goals of a Law School. The third aim of the paper is to draw attention to changes in the legal world in which lawyers work and the implications of these changes for legal-education missions and goals across the whole world.

DIVERSITY IN GOALS AND OBJECTIVES OF LAW SCHOOLS

It can hardly be assumed that all law schools educate their students with similar goals and objectives in mind. Even law schools in the same country will probably have different goals, or place different emphases on shared goals. In this section of the paper, we highlight some of the conditions that might influence schools' definitions of their goals and objectives.

Any question on the determination of the purpose for legal education invariably raises another major question about who determines the purpose for education. Is it the student (who consumes the

educational product and ultimately emerges as "educated"), or those who pay his or her fees (parents, the government or employers), or potential employers or the academic staff of the institution[3] or the needs of the country at large? I submit that the answer to this major question in relation to a given Law School has potential to influence a school's goals and objectives in a particular way.

The purpose of legal education may also depend on whether the school is a public or private institution. Presumably, private schools have more flexibility in determining the goals and objectives of their schools in accordance with their private interests than public schools whose goals may be closely linked to national goals.

Furthermore, and probably most important in African contexts, the purpose for which law students are educated may depend on the political history of the country. In this respect, Amina Mama[4] has observed that:

> In previously colonised [African] contexts, public universities have always been highly regarded, as key vehicles for the pursuit of all the national and continental aspirations intrinsic to political, economic, and intellectual de-colonisation. In terms of the 'core business,' this meant the production of both knowledge and people equipped with the intellectual capacities needed to pursue national and regional advancement.[5]

From this statement alone, it can be seen that the purpose of legal education may depend on the colonial or non-colonial history of the country. Indeed, the national and regional needs of South Africa, as connected to its political history of apartheid, feature prominently in the missions and goals of UCT and its Law Faculty.

Amina Mama's statement suggests another context-specific factor—that African countries may have different expectations or different degrees of expectation about the role of higher-education institutions from countries in other parts of the world, especially the developed world. In this respect, she further observes that while "Universities the world over have always been public or publicly-oriented institutions, this connection to the public is even more significant in Africa."[6] African

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3. Lee Harvey and Diana Green, *Defining Quality,* 18 ASSESS. & EVAL. IN HIGHER ED. 9 (Vol. 1 1993).

4. Professor Amina Mama is a Nigerian feminist writer and academic who has researched and written in the area of higher education in Africa, among others, and is currently at Mills College California as Barabra Lee Distinguished Chair in Women's Leadership. (*See* http://www.google.co.za, last visited July 29, 2010.)

5. Amina Mama, *Restore, Reform but do not Transform: The Gender Politics of Higher Education in Africa,* 1 J. OF HIGHER ED. IN AFRICA 101 (2003), *available at* http://www.codesria.org/IMG/pdf/5-Mama.pdf.

6. *Id.* at 106-07.

countries view universities as "key sites for the production of intellectual capacity that is both socially responsible and relevant to the regional development agendas."[7]

In the next section of the paper, we consider the goals of a single institution of higher education, the UCT Law Faculty, as a point of departure for understanding the relationship between a country's local conditions, especially the political and social contexts, and the goals of a law school in the African setting.

THE GOALS OF AN AFRICAN SCHOOL: THE UCT LAW FACULTY

The goals of a law school cannot be divorced from the mission of the university or institution in which it is established. In seeking to gain insight into the role of local conditions or circumstances in the definition of the goals of an African law school and the attainment of these goals through the school's curriculum, we will consider the goals of both UCT and its Law Faculty.

Historical Perspective of the Law Faculty

The UCT Law Faculty was established in 1859, and it is the oldest Faculty of Law in South Africa.[8] It should be stated at the outset that the main focus of the discussion are the current goals of the Faculty. Although a detailed consideration of the goals of the Faculty from a historical perspective would have been interesting, it was not possible to find comprehensive statements of the successive missions or goals of the Faculty in its earlier years in the historical sources we consulted.[9] However, the little that could be gathered from these sources is enough to show the dynamism of the mission of this Faculty as it developed over different periods of time—from the arrival of the Dutch settlers and, later, of the English in the territory to the present. The arrival of the Dutch and English was significant to legal education, because it introduced competing legal systems (i.e., Roman Dutch Law and English Common Law) only one of which was favoured by the founders of the Faculty.

It is apparent from the historical sources that one of the goals of legal education at UCT Law Faculty in the nineteenth century was to

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7. *Id.* at 104.

8. *See University of Cape Town Faculty of Law Student Handbook 2010 book 10 in this series of handbooks* (2010) [hereafter *Student Handbook*], ix (author's pagination), *available at* http://www.uct.ac.za/apply/handbooks/ (click on "download" hyperlink next to "Law 2010").

9. The main source consulted is Denis Cowen and Daniel Visser, *The University of Cape Town Law Faculty: A History 1859-2004* (Siber Ink 2004).

raise and consolidate the prospects of the development of Roman Dutch Law as the foundation of the legal system.[10] This system of law was under threat of being Anglicised or abolished and replaced by the English common law following the British occupation of the Cape of Hope in 1806.[11] These propositions may be demonstrated by statements of the Faculty's "founding fathers," such as that of Cowen:

> No legal system can survive unless it is taught scientifically. . . ." Taught Law is tough Law" by which [is meant] durable law. In short, the tide could not really turn in favour of the Roman-Dutch Law in South Africa [in the nineteenth century] until a sound local tradition of tuition in its basic principles was built up. . . . If I were asked to single out the cause which, more than any others, set back the prospects of the Roman-Dutch law in South Africa during much of the nineteenth century, I would point to the lack of scientific training in Roman-Dutch Law.[12]

In the early years of the establishment of the apartheid regime, the Faculty's goals apparently turned to concerns about the defence of the Rule of Law in a repressive and racially segregated society. This remained the main goal of the Faculty throughout the apartheid era. A broad articulation of this objective appears in Visser's historical account of the Faculty in the following terms:

> In a time of injustice and repression a university law faculty has a very special role: It has a duty to teach the new generation of lawyers that laws can sometimes not be worthy of that appellation and that the world can be different from the one that they see; and, above all, that they have a role to play in ensuring that the Rule of Law returns some day.[13]

In terms of the content of the curriculum of those times, a law faculty was expected to teach the law that students needed to be able to practise, as well as to impart to them the "ethical framework within which law should be practised."[14] Equally important was teaching students the law in the context of "the prevailing social and economic forces,"[15] and to make plain to them "the role of the law and lawyers in shaping the legal reality of the day."[16]

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10. *See id.* at 8.
11. *See id.* at 1-23.
12. *See id.* at 8.
13. *See id.* at 77.
14. Denis Cowen and Daniel Visser, *The University of Cape Town Law Faculty: A History 1859-2004* 88 (Siber Ink 2004).
15. Denis Cowen and Daniel Visser, *supra,* note 9 at 78.
16. *Id.* at 78.

The following statement by Visser serves to conclude this brief historical perspective of the Faculty's goals, and to introduce its goals in the new constitutional dispensation after the end of apartheid in 1994: "Our Faculty, which . . . could claim that it had lived up to the challenges of how to teach [law] in a moral way during a time of repression, was now given the opportunity also to contribute directly to shaping the future of the law in the new South Africa."[17] The reference in this statement to the Faculty's opportunity to shape the future of law in South Africa is an allusion to the role, among other things, that several professors in the Faculty played in the constitutional lawmaking process leading to the end of apartheid.[18]

It is necessary to observe that although this is not clear from the historical sources consulted, one cannot avoid the temptation of speculating that, as in other colonial contexts, Euro-centric ideas and worldviews were predominant in many spheres of the country's life, including tertiary education. Furthermore, in addition to entrenching segregation and inequalities among members of the population, South Africa's legacy of apartheid accentuated these Euro-centric ideas and worldviews. As we shall see later, the field of education and what was taught at UCT and, probably, in most other universities in some way or another, implicitly succumbed to these ideas and worldviews.

Thus one of the important broad contexts to the current missions of UCT and the UCT Law Faculty is the history of colonialism and apartheid and the end of these legacies in 1994 when South Africa entered into a new constitutional dispensation.

The change from the old order to the new dispensation in 1994 brought about new national aspirations, such as, for example, those contained in the Post-Amble to the interim Constitution of 1993;[19] new development goals and challenges; the recognition of the need for the regeneration of the country and the African Continent as a whole; and the need to redress injustices of the past in many aspects of society, including higher education.

17. *Id.* at 109.

18. *See id.* at 109ff.

19. The Post-Amble, which according to § 232(4) of the interim Constitution (S. AFR. (Interim) CONST. 1993) formed part of the Constitution, laid down aspirations of reconciliation and the reconstruction of a society previously characterised by "strife, conflict, untold suffering and injustice and gross violations of human rights." The aspiration was to bring about a society "founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africa, irrespective of colour, race, class, beliefs or sex."

Current Goals of the UCT Law Faculty

Although there has been no University-wide debate about systemic structural changes and curriculum transformation necessary to position UCT in the new national dispensation,[20] individual faculties have, evidently, engaged (in varying degrees) in developing their missions and goals in response to the new local contexts, as well as to the location of UCT on the African Continent. The missions and goals of both the University and the Faculty underscore this development.

The current goals and objectives of the UCT Law Faculty are encapsulated in the mission of the University, the statement of the values and goals of the Faculty and the statement of the purpose of the Bachelor of Laws degree programme (LLB programme).

The mission of UCT starts with the declaration of the institution as an "outstanding teaching and research University, educating for life and addressing the challenges facing society."[21] It then elaborates on each of the mission's key facets in a manner that sets out the University's objectives (and indirectly the Faculty's) within their local, regional and international contexts as follows:

> educating for life means that our educational process must provide:
>
> - a foundation of skills, knowledge and versatility that will last a lifetime, despite a changing environment;
> - research-based teaching and learning;
> - critical inquiry in the form of the search for new knowledge and better understanding; and an active development role in our cultural, economic, political, scientific and social environment.
>
> Addressing the challenges facing our society means that we must come to terms with our past, be cognisant of the present, and plan for the future. In this, it is central to our mission that we:
>
> - recognise our location in Africa and our historical context;

20. A notable debate in this respect was started by Professor Mamdani in the Faculty of Social Science and Humanities about the teaching of Africa in the curriculum. *See* Mahmood Mamdani, *Teaching Africa at the Post-Apartheid University of Cape Town: A Critical View of the "Introduction to Africa" Core Course in the Social Science and Humanities Faculty's Foundation Semester, 1998*, SOC. DYNAMICS, Summer 1998, at 1.

21. *See Book*, *supra* note 8, cover page (author's pagination).

- claim our place in the international community of scholars;
- strive to transcend the legacy of apartheid in South Africa and to overcome all forms of gender and other oppressive discrimination;
- be flexible on access, active in redress, and rigorous on success;
- promote equal opportunity and the full development of human potential; strive for inter-disciplinary and inter-institutional collaboration and synergy; and value and promote the contribution that all our members make to realising our mission.[22]

In the 2004 statement of its vision and goals, the Faculty reiterates the University's goal of research and teaching in the pursuit of which it hopes to "contribute to redressing the inequality and disparity that continues to exist within South African society."[23] Furthermore, the Faculty recognises that the realisation of these goals requires, among other things, "scholarship that is critical . . . and which explores the potential of the law as a means to achieving justice for all."[24]

The purpose of the LLB programme directly addresses the training of law students as follows:

> The central purpose of the [LLB] programme is . . . to deliver graduates who are able to contribute meaningfully to the development goals of the country. The outcome . . . should be a versatile graduate with general analytical and communication skills, the dimensions of these skills that are specific to law, a basic conceptual knowledge of South African law, and the ability to apply, assess and develop the law critically and in the light of South African needs and international developments. In all these respects the faculty aims at excellence. To this end the faulty believes its programmes should be aimed at producing broadly educated graduates who have the historical, comparative and jurisprudential background that is essential for a thorough and critical understanding of law and legal institutions, for only such graduates will be equipped to assume leadership and make full use of the opportunities for

22. *Id.*
23. Denis Cowen and Daniel Visser, *supra* note 9, figure 52 (after page 88).
24. *Id.*

> renewal provided by the new Constitution and the increasing globalising trends in law and business.[25]

Interestingly, both the University and Faculty missions include goals aimed at addressing the historical context of the country in the apartheid era, and at overcoming the inequalities associated with that period. This, in our view, shows the role, discussed in the preceding section, of specific contexts in shaping the educational goals of law schools.

Furthermore, a careful reading of the goals and objectives of the University and the Faculty scattered in the various documents reveals that UCT seeks to produce graduates who are versatile enough in knowledge and skills to contribute to the social, cultural, economic and political development and legal transformation of South Africa.

In more concrete terms, the legal education: engages the students in intellectual enquiry into the discipline of law, while giving them basic training to prepare them for professional practise in the broad sense of being able to work with the law in different areas of life; embeds a sense of professional responsibility; promotes a sense of duty to stand up for the Rule of Law; inculcates an inspiration to work for the improvement of law and the operation of the legal system, and for the achievement of social justice against the background of the country's political history of racial segregation and other forms of discrimination; prepares them for leadership and civic responsibility; and educates them to be able to engage with legal issues arising in international and global contexts.[26] The extent to which each of these educational goals manifests itself, of course, varies.

The remaining part of this section expands the discussion of the goals of the Law Faculty in relation to the education of students. It considers three of the many key aspects of both the structure and content of the curriculum for the delivery of the central goals of the LLB

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25. *See Quality Assurance Report, Faculty of Law, University of Cape Town (2003)* (unpublished) [hereinafter *Report*], 13. This report was assembled by a Faculty Working Group (Anashri Pillay, Wilfred Scharf, Francois Du Bois, Conrad Rademayer) chaired by the author as part of the preparatory work for the institutional audit of the University of Cape Town by the Higher Education Quality Committee of South Africa. The Faculty was required to put together a self-review portfolio to review, among other things, the LLB programme's "specification of its objectives, criteria and standards' and 'whether the objectives of the programme are met." *See Report* at 1. This report is not an official document of the Faculty in the sense of it having been adopted by the main governing body of the Faculty, the Board. However, both the methodology used to compile it and the consultations within the Faculty in the process of its compilation give the report considerable credibility as representing the true position of the areas of the programme under review.

26. These were some of the issues the Conference Planning Committee of the Association prepared for discussion at the International Association of Law Schools Conference in Canberra (cited *supra*, note 1).

programme.[27] It will also be shown that the curriculum contains elements that are directly related to the goal of addressing South Africa's historical context of apartheid.

In the first place, the curriculum is designed to give students a broad education by requiring them to acquire knowledge in non-law disciplines, such as, for example, history, politics, languages, economics. This is accomplished through the three streams of the LLB programme, namely, a three year postgraduate LLB stream, a five or six year combined Law and Commerce or Law and Humanities LLB stream and a four year undergraduate LLB stream. Students in the first stream enter the LLB programme having completed a non-law bachelor's degree. Students in the second stream follow an undergraduate programme in Law and Humanities or Law and Commerce, leading to a Bachelor of Arts/Bachelor of Social Science or a Bachelor of Commerce/Business Science. They then continue to study law as postgraduate students for two more years. Broad-based education is achieved in this stream by the inclusion of 'cognate courses which ensure that the student has a thorough grasp of at least one discipline outside of law.'[28] Students enter the third LLB stream (undergraduate LLB stream) as matriculants (i.e. after completing high school) to study law for four years, under a curriculum that includes non-law courses taught in the Humanities and Social Science Faculty.

Thus different entry routes into the LLB programme provide for different levels of inclusion of non-law disciplines.[29] The underlying aim of the inclusion of non-law disciplines is "to ensure that students develop into well-rounded graduates who possess [both] the technical knowledge and skills of their professional discipline [and] a boarder appreciation of society and its needs, and of their role in fulfilling these."[30] Other key features of both the UCT and Faculty plans relating to the LLB curriculum include the establishment of optional and required "core" courses and a compulsory skills component of the programme, consisting, for example, of writing skills, computer skills, problem solving, analysis, research and oral presentation.[31] Furthermore, as seen from the mission of UCT, the purpose of the programme and the content of the curriculum, the LLB programme has both international relevance and relevance to Africa.

27. For a fuller discussion of various aspects of the curriculum, its objectives and implementation see *Report*, *supra* note 25, at 13-42.

28. *See Book*, *supra* note 8, at 5.

29. *See Report*, *supra* note 25, at 17; *Book*, *supra* note 8, at 4-5.

30. *Id.*

31. *See Report*, *supra* note 25, at 4-5; *Book*, *supra* note 8, at 9.

As already intimated, these aspects of the curriculum contribute to the goal of producing broadly educated and "versatile graduates with general analytical and communication skills . . . that are specific to law, a basic conceptual knowledge of South African needs and international developments."[32]

(ii) The second aspect of the curriculum is the extended study programme, which is used to take account of previous disadvantage in the schooling of Black, Coloured and Indian South Africans due to the apartheid system of segregation. In this programme the curriculum of the students concerned is spread out over a longer period (usually one year) to give him or her competencies necessary to complete the LLB degree. The menu of courses is tailored to each student's circumstances, depending on his or her performance in preceeding years and the number of courses he or she needs to take in each year of study in order to complete the LLB. A related teaching activity is the provision of academic support to previously disadvantaged students. This academic support provides such students special tutorials by, and regular consultation with, a lecturer especially charged with these teaching responsibilities.

(iii) The third aspect of the curriculum is that its objectives are to "keep abreast of changing international, national, regional and professional needs; equips students to meet regional development needs; contains appropriate and relevant disciplinary material; and promotes social responsibility and critical citizenship."[33] In order to achieve these objectives, the structure and content of the curriculum includes, as already stated, both compulsory or core courses and a relatively wide range of optional courses. These courses prepare students for professional legal practice in the country "in a manner that reflects the [F]aculty's vision of producing graduates who have grasp of the law's international environment, its African context, and its general character as a social practice."[34]

Optional courses, which are "designed to cater for specific needs of the legal profession and/or commerce and industry," enable students to choose courses according to their interests and career plans.[35] The menu of compulsory courses is such that it includes all subjects that are essential to the development of lawyers.[36] This menu also enables students to receive a broad-based knowledge of South African law, so that they "are able to adapt and extend their knowledge and skills to a

32. *Report*, *supra* note 25, at 13.
33. *Id.* at 15.
34. *Id.*
35. *Id.* at 5.
36. *Id.*

wide variety of circumstances."[37] Three core courses are worthy of specific mention in relation both to the curriculum objectives under consideration and the broader University and Faculty goals discussed earlier. These are International Law, Jurisprudence and African Customary Law.

International Law

In respect of the teaching of international law, the Faculty is of the view that globalisation and the increasing internationalisation of all facets of law, including criminal law and procedure, children and parental responsibilities and rights, contract formation and enforcement, intellectual property and trade law, make it necessary that all lawyers have a good grounding in the basic principles of international law.[38]

The exchange/semester study abroad elements of the curriculum complement the course on International Law in addressing the issues of globalisation and internationalisation of law. The semester study abroad programme enables a student from an overseas university to register for prescribed law courses for one or more semesters. Similarly, students from overseas tertiary institutions with which either the University or the Faculty has entered into an exchange agreement may register to study law courses for one or more semesters.[39]

These programmes, undoubtedly, add to the legal education of students for globalised and international legal environments. In the first place, they provide UCT students with the opportunity to sit in the same class and study with international students from different parts of the world. Secondly, in the case of exchange programmes, they expose students to instruction by international exchange programme teachers and (in appropriate cases) afford students the opportunity to be taught by local academic members of staff who teach foreign law in the countries of the Faculty's partner institutions.

Jurisprudence

Jurisprudence is viewed by the Faculty as the course that ensures that the legal education of students is not reduced to technical training that does not enable students to reflect "on the nature of law, its place in society and relationship to justice."[40] Thus students are not merely legal

37. *Report, supra* note 25, at 17.
38. *See id.* at 15.
39. *See Book , supra* note 8, at 71.
40. *Report, supra* note 25, at 15.

technicians but are equipped to think broadly about the nature and role of law in society.

African Customary Law

With regard to the inclusion of African Customary Law in the curriculum, the Faculty is convinced that legal training that is sensitive to the Faculty's African heritage and location cannot treat this subject "as less central to the legal system than law of European extraction, and that an appreciation of the interplay and tensions between the diverse facets of South African law is essential to grasping its nature and to preparation for practice."[41]

The teaching of this course in relation to the goals of the Faculty deserves special and detailed consideration. In my view, this course constitutes a specific example of a curriculum-based initiative that addresses the Faculty's goal concerning the country's legacy of apartheid.[42] Furthermore, as a non-western legal system, African Customary Law is implicated in the teaching of law in African Universities beyond South Africa and the borders of the African Continent.

Throughout the apartheid period, African Customary law was not fully recognised by the dominant state legal system of western origin as part of the South African legal system. This lack of recognition took no account of the fact that African Customary Law governed the relations of the majority of the South African population (i.e., Black South Africans) in various spheres of private law. The legal education curriculum at UCT reflected the marginalisation of this system of law in the legal system. Although concerns about the exclusion of African Customary Law from the curriculum was raised in the early history of the Faculty,[43] this subject did not become a requirement for the LLB degree until 1978 when it was introduced as a third year LLB course. But even then it was taught as an optional course offered in the Faculty of Arts rather than as a core course offering in the Faculty of Law.[44]

Thus, the status of African Customary law in the UCT curriculum was for a long time not very different from its status in European and

41. *Id.*

42. The author is the convenor of this course in its current form. It is therefore necessary to declare possible bias in her discussion of the course.

43. *See* Cowen and Visser, *supra* note 9, at 65.

44. *See University of Cape Town Law Faculty Handbook* 61 (1978). It is evident that the course was introduced in the LLB programme in 1978, because it was not a requirement in 1977 (*see Faculty of Arts Handbook* (1977)). This was also confirmed by a colleague who graduated with an LLB degree in 1977.

other Western universities. In this respect, Menski[45] has shown that non-western legal systems, including the customary laws of the indigenous peoples in America,[46] Australia and Canada, and customary law in Africa and Asia, are not taught as mainstream courses or as part of legal theory in mainstream courses on jurisprudence. It has also been observed that in most cases, if students are exposed to non-western legal systems at all, it is through courses in historical, anthropological and political studies, or occasionally in legal pluralism studies and comparative legal studies.[47] With regard to comparative legal studies, however, it has been observed that from a "European perspective, the comparative legal world, with few exceptions, still ends in Gibraltar and at the Bosporus."[48] Menski further says that even in schools that have incorporated the study of non-western legal systems as area studies, such as the School of Oriental and African Studies of the University of London, there is evidence that these studies are not taken seriously by some scholars of these institutions. For instance, law professors who engage in these studies and argue for the inclusion of non-western legal systems in what is considered to be law are referred to by their colleagues as "eccentric[s] from a bygone age."[49]

Thus, until about a decade ago, African Customary Law did not have any more of a core course status in the curriculum at UCT than it did in the foreign universities of the West. But this state of affairs could not continue after 1994.

The inclusion of African Customary Law in the UCT Law Faculty's LLB core curriculum as a standalone senior course in 1999[50] coincided with nationwide developments and debates about legal reconstructions, and attempts at developing an inclusive legal system befitting a constitutional democratic country that was free of racial and other forms of discrimination, and that treated all racial groups and their institutions

45. Professor of South Asian Laws, School of Oriental and African Studies, London.

46. *See* W. Menski, *Cherrypicking Customs: On What Happens when Custom is not Taught* in THE SHADE OF NEW LEAVES: GOVERNANCE IN TRADITIONAL AUTHORITY; A SOUTHERN AFRICAN PERSPECTIVE 395-411, at 396-397 (Manfred O. Hinz and Helgard K. Patemann eds., 2006). *See also* Aliza Organick, *The Internal Law of Indigenous Peoples as a Source of Study in Comparative Law, in* the International Association of Law Schools Papers prepared for the International Association of Law Schools Conference on "Effective Teaching Techniques About Other Cultures and Legal Systems," Montreal, Canada, May 30, 2008, at 295 (*abstract available at* http://www.ialsnet.org/meetings/assembly/MasterBookletMontreal.pdf).

47. *See, e.g.*, N. Solomon, *Customary Law Teaching in European Universities, in* THE SHADE OF NEW LEAVES: GOVERNANCE IN TRADITIONAL AUTHORITY; A SOUTHERN AFRICAN PERSPECTIVE 413-427 (Manfred O. Hinz and Helgard K. Patemann eds., 2006).

48. W. Menski, *supra* note 46, at 401.

49. W. Menski, *On the Law of Laws*, Inaugural Lecture, at 6 (Oct. 19, 2005).

50. This happened when the LLB programme was changed to include the four-year undergraduate LLB programme. Until this time, African Customary Law was taught as an optional course.

with dignity. Not only had African Customary Law been recognised by the interim and final Constitutions of 1993 and 1996 respectively, but the judiciary was busy with "mainstreaming" this system of law and other non-western legal systems as parts of the national legal system in accordance with the Constitution.[51] Other significant developments in the legislative area consisted in national discussions concerning the recognition of major areas of African Customary Law, namely, the Law of Marriage and the Law of Succession. These discussions resulted in the enactment of the Recognition of Marriages Act in 1998 and the Reform of the Customary Law of Succession and Regulation of Related Matters Act in 2009.[52]

Against this backdrop of monumental developments in the field of African Customary Law, coupled with the fact that this system of law governs the majority of the population, legal education generally could no longer justifiably ignore African Customary Law. Nor could it relegate this system of law to notions of culture or extra-legal regulatory system or, worse still, to what Menski calls "the dustbins of history."[53]

Evidently, the Faculty seized the historic moment of the demise of apartheid to raise the status of African Customary Law in the core curriculum at the senior level of the LLB programme.[54]

The teaching of African Customary Law as a stand-alone course at UCT Faculty is in contrast with the approach taken by other Faculties where African Customary Law is "integrated" in other courses, for example, Family Law or Succession Law.[55] The disadvantage of this approach is that it leaves the extent of inclusion of African Customary Law in the course into which it is integrated and, therefore, in the curriculum, to the discretion of individual course convenors. The exercise of this discretion in favour of the inclusion of African

51. *See, e.g., Ryland v Edros* 1997 (2) SA 690 (C); *Amod v Multilateral Motor Vehicle Accidents Fund (Commission for Gender Equality Intervening)* 1999 (4) SA 1319 (SCA) ([1999] 4 All SA 421; *S v Makwanyane* and Another 1995 (3) SA 391 (CC) (1995 (6) BCLR 665) (CC).

52. *See* Acts 120 of 1998 (in force on 15 November 2000) and 11 of 2009 (not yet in force) respectively. On these developments generally, *see* Chuma Himonga and Rashida Manjoo, *What's in a Name? The Identity and Reform of Customary Law in South Africa's Constitutional Dispensation, in* THE SHADE OF NEW LEAVES: GOVERNANCE IN TRADITIONAL AUTHORITY; A SOUTHERN AFRICAN PERSPECTIVE 329 (Manfred O. Hinz and Helgard K. Patemann eds., 2006).

53. *See* Menski, *supra* note 49, at 4.

54. The author personally witnessed this development as a member of the Faculty and convenor of the course on African Customary Law during the curriculum-change discussions upon the introduction of the four-year LLB programme.

55. *See* C. Mchombu, *A Comparison of Customary Law Programmes in Southern African Universities, in* THE SHADE OF NEW LEAVES: GOVERNANCE IN TRADITIONAL AUTHORITY; A SOUTHERN AFRICAN PERSPECTIVE 429 (Manfred O. Hinz and Helgard K. Patemann eds., 2006).

Customary Law in turn depends, firstly, on whether the convenor of the course has sufficient knowledge of African Customary Law to be able to integrate it into the course. Secondly, and, most importantly, the exercise of the discretion is likely to be influenced by the course convenor's legal theoretical perspective.

Most teachers in English-speaking Africa, including South Africa, have been trained in the positivist legal theoretical tradition as opposed to theoretical perspectives that allow for the expansion of the notion of law beyond positivist conceptions of law.[56] Lawyers in this tradition view non-western legal systems as anything but law.[57] They would, therefore, be unlikely to integrate this system of law into their courses, even assuming that they had the relevant knowledge of it. This would deny students any exposure to the pluralistic legal world that characterises African legal systems. In the case of the UCT Faculty this would defeat its goal of recognising its location on the African Continent.

In our view, the teaching of African Customary Law as a senior standalone core course at UCT was the right approach. And we would argue that, in light of emerging debates about the relevance of non-western systems of law in many parts of the world,[58] including European countries,[59] all Law Faculties on the African Continent should adopt this approach in preparing their students for legal practise in the centuries ahead. Otherwise, law graduates on the continent will be ill-prepared to practice law in a broad sense in changing environments with respect to non-western legal systems.

In conclusion the Faculty has attempted to design both the structure and content of the curriculum to realise some of its major goals as defined in its mission, statement of its values and the objectives of the LLB programme. The inclusion in the curriculum of core and optional courses, and of courses chosen to accomplish specific purposes, such as International Law, Jurisprudence, and African Customary Law, has placed the Faculty in a position of strength with regard to the achievement of its national and continental goals. Furthermore, the training in African Customary Law in particular serves to equip graduates to meet the challenges of "the legally pluralistic realities of our

56. These include legal pluralism as expounded by, for example, John Griffiths, Sally Folk Moore and other legal anthropologists. *See* John Griffiths, *What is Legal Pluralism?*, 24 J. LEG. PLURALISM & UNOFFICIAL L., 1 (1986); SALLY FALK MOORE, LAW AS PROCESS: AN ANTHROPOLOGICAL APPROACH (1978); Franz von Benda-Beckmann, *Who's Afraid of Legal Pluralism?*, 47 J. LEG. PLURALISM & UNOFFICIAL L., 37 (2002).

57. *See* Menski, *supra*, note 46.

58. *See id.*

59. *See id.*

globally interconnected world today."[60] Furthermore, we have suggested that the approach the UCT Law Faculty has adopted to the teaching of Customary Law should serve as a model for teaching this subject in other African faculties.

IMPLICATIONS OF CHANGING CONDITIONS FOR LAW SCHOOL GOALS AND OBJECTIVES WORLD-WIDE

It has been argued above that there is no uniformity in schools' goals and objectives. Special circumstances and settings in which each school operates inform the formulation of its goals and objectives. However, one has to concede that changing conditions in the legal and business world, such as the internationalisation of law through treaties of all kinds, including those on human rights, and the process of globalisation have implications for legal-education goals beyond national borders.

Furthermore, Menski has, for example, shown that due to the increasing presence of people from countries with non-western legal systems in England, English courts have been under pressure to learn about the non-western laws of the people concerned. More importantly, the courts incorporate the cultural elements of some disputes involving the emigrants in their decisions, in order to achieve justice even though the decisions concerned are ultimately couched in English law principles.[61] This indicates, as already stated, the increasing importance of non-western legal systems in places of the world other than those from which they originate.

These developments in the legal world suggest the need for Law Schools across the world to consider the inclusion of common goals for legal education in their missions.

Reflecting further on the effect of globalisation, Sanchez[62] has observed that:

> In the light of globalization, failure to train students in laws, culture and legal language of other nations will lead to inadequately prepared lawyers in the expanding legal market place. . . . Law schools have a duty to prepare students to be effective, competitive, and ethical practitioners. By not preparing students to specialize in foreign law

60. *Id.* at 395, 408.

61. W. Menski, *Chameleons and Dodgy Lawyers: Reflections on Asians in Britain and Their Legal Reconstructions of the Universe*, *in* INDO-BRITISH REVIEW. A JOURNAL OF HISTORY, vol XXIII No. 2, 89, 100.

62. Assistant Professor, Western State University College of Law, U.S.A.

> areas during this era of globalisation, law schools will be failing in the performance of this duty.[63]

Thus, while "globalisation does not minimise the importance of the local,"[64] this phenomenon, together with other changes in the legal world, suggest that we have reached a point in legal education when all law schools may need to adjust their goals and objectives to meet common demands in educating their students. Schools can neither remain indifferent to global contexts of legal education nor insulate their goals and objectives from demands for the production of graduates who are equipped for "lawyering" in global contexts and for translational and international legal practice. These demands may come from potential employers and, not least, from students who are forced to search for work in a local yet globalising world.

Furthermore, it may be suggested that there is a need for schools across the world to continue to debate the goals of law schools in a changing environment and other fundamental issues, such as what core goals and values need to inform legal education, as well as how to achieve these goals and values through the curriculum. This is not to mention the need for schools to learn from each other about managing the impact of globalisation without neglecting the goals and objectives of legal education at the local level. For, as Twining[65] affirms: "Globalisation does not minimise the importance of the local, but it does mandate setting the study of local issues and phenomena in broad geographical and historical contexts. For most legal scholars the maxim should be: 'Think global, focus local.'"[66]

Clearly, the challenge to law schools will be to develop goals and curricula that are receptive to the inevitable influence of globalisation, whilst at the same time ensuring that domestic needs are respected. It will be for law schools to strike the balance. From an African perspective, our stance is that an approach that is either totally Euro-centric or Afro-centric should be resisted. Law schools would need to take the middle ground.

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63. Gloria M. Sanchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 SAN DIEGO L. REV. 635, 678 (1997).

64. *See* WILLIAM L. TWINING, GLOBALISATION AND LEGAL THEORY 252 (2000).

65. Professor of Jurisprudence and leading figure in British legal education, University College London, http://www google.co.za (last visited July 30, 2010).

66. TWINING, *supra* note 64, at 252.

CONCLUSION

This article has attempted to show that there can be no uniformity in the missions and goals of law schools or faculties as long as there are differences in the conditions under which they are established in different countries. Questions of political history, the public or private nature of the faculty and the constituencies represented by the Faculty are among obvious factors that influence the formulation of the goals of individual faculties. The discussion of the goals of the UCT Law Faculty against the historical backgrounds of the country and the Faculty, as well as the discussion of the curriculum through which the Faculty seeks to deliver its goals, has shown how the goals of a Faculty are connected to the local circumstances of the country in which it is located.

However, the paper has also conceded that the growing internationalisation and globalisation of law form the basis for an argument for degrees of uniformity among the goals of faculties or schools across the world. These uniformities would enable law graduates to play meaningful roles as legal practitioners in a broad sense in international and global contexts. But this in no way calls for law faculties or schools to neglect to cater to local conditions in their missions. Instead it calls for careful balance between competing environments relating to legal education.