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The four-year undergraduate LLB: Progress and pitfalls

Summary

In this paper, the historical and contextual factors that resulted in a change from a postgraduate LLB to an undergraduate LLB, as the single qualification for lawyers in South Africa in 1997 as part of a national transformation agenda, are reviewed. It is timely to consider whether the motivating reasons for introducing a four-year degree, to enhance representivity within the legal profession and to reduce the cost of obtaining a legal education, have been met. Systemic and structural features of post-apartheid South Africa, which reflect the legacy of unequal educational provision, a vast socio-economic divide, and a divided legal profession, continue to hamper attempts to redress past imbalances. A failing school system, ongoing poverty, and the underpreparedness of increasing numbers of students gaining access to higher education have produced data that reveals high university drop-out rates, particularly for African students, and distressingly low levels of student success at tertiary institutions. Dissatisfaction amongst stakeholders regarding the quality of law graduates has added to the current impasse as to how legal education can most effectively be improved. The establishment of a new Ministry of Higher Education and the undertaking of a research project on the effectiveness of the law curriculum by the Council on Higher Education both promise some possibility of flexibility and change in the future.

Die 4-jaar LL.B: Vordering en struikelblokke

Hierdie artikel onderneem 'n oorsig van die historiese en kontekstuele faktore wat aanleiding gegee het tot die verandering van 'n nagraadse LL.B graad tot die voorgraadse LL.B. Dit is tydlig om te oorweeg of daar uitvoering gegee is aan die redes ter motivering van die verandering. Hierdie redes sluit in die bevordering van verteenwoordiging ('representivity') in die regsprofessie, en om die koste verbonde aan die verkryging van 'n regsgraad te verminder. Sistemiese en strukturele kenmerke van post-apartheid Suid-Afrika, welke kenmerke die erfenis van ongelyke onderwysvoorsiening, wye sosio-ekonomiese gapings en 'n verdeelde regsberoep reflekteer, belemmer steeds pogings om ongelykheid aan te spreek. 'n Onsuksesvolle onderwysstelsel, voortdurende armoede, en die onvoorbereide aard van toenemende getalle studente wat toegang verkry tot tersiêre onderrig genereer data wat dui op hoë druipsyfers (veral vir swart studente) en uiters kommerwekkende lae vlakke van sukses vir studente by tersiêre instellings. Ontevredenheid onder belanghebbendes aangaande die kwaliteit van gegradueerdes in die regte dra by tot die huidige onsekerheid oor hoe regsonderrig mees doeltreffend verbeter kan word. Beide die totstandkoming van 'n nuwe Ministerie vir Hoër Onderwys en 'n navorsingsprojek oor die effektiwiteit van die regscurriculum deur die Raad op Hoër Onderwys beloop die moontlikheid van buigsamheid en verandering in die toekoms.

1. Introduction

The four-year undergraduate LLB degree was introduced in 1997 as part of the transformation agenda of the new democratic government.¹ The change was to address the historical legacy of an under-representivity of blacks, and particularly Africans, in the legal profession as well as the perceived status differential between attorneys holding a B Proc degree and those who had completed a primary degree, followed by a postgraduate LLB. This distinction largely followed the lines of racial difference, and also determined access to the advocates' profession and ultimately, to the judiciary. The expense of completing two degrees and the additional years spent studying at university represented an impediment that most aspiring African lawyers were unable to afford. In 1994 it was estimated that only about 20% of the legal profession were of African origin.² In a society where new constitutional values promised the hope of justiciable socio-economic and other human rights, an increase in the number of African lawyers to serve their communities was urgently required.

A long history of inequality in education provision, a vast socio-economic divide and structural and systemic features of apartheid society and the legal profession had contributed to the situation that was in existence at the time of the transition to democracy. Efforts to redress the imbalances were an immediate and pressing demand, both to enhance the legitimacy of the new government and to effectively address issues of transformation.

While the convergence of a plethora of factors, political and symbolic, beyond the control of legal educators, inevitably led to a dramatic reconceptualisation of legal education in 1996/7, little attention was paid to the pedagogic soundness of the change. External drivers on both a global and a national level swept the process along a pre-determined route that was not unique to the legal profession in South Africa. The interplay of powerful protagonists, motivated by interests outside and beyond the academic curriculum, led to the introduction of a single four-year undergraduate LLB degree as the only qualification for entry to legal practice. It was a symbolic gesture to herald a transformative shift, yet, looking back, it seems to have been a hollow victory, which continues to resonate some twelve years later with an empty ring. The informing "vision" that inspired the change appears to have been clouded by vague, atheoretical interests, founded upon symbolic gestures and unarticulated premises, lacking in a well-researched or pedagogical foundation.

I shall argue that it is the very "fuzziness" and the inherent tensions motivating the inspiring vision which created space for a varied range of curricula to develop and be implemented, to the satisfaction of legal educators, allowing them to carry on "business as usual" in an attenuated form; this was the trade-off for being out-voted during the policy-making process.³ The short-sighted measure of establishing one abbreviated degree for all lawyers, introduced at the political level, could not be translated into an effectual transformation strategy without a complete and thorough-going overhaul of the education

1 *Qualification of Legal Practitioners Amendment Act 78/1997.*

2 McQuoid-Mason 2008:2.

3 Barnett & Coate 2005:81.

system in its entirety, state commitment to additional public funding of higher education, and a more solid theoretical foundation to underpin the pedagogical change that was made. In addition, unimproved delivery in the primary and secondary schooling phase since 1994, as well as ongoing poverty, and the rapid increase in tertiary enrolments that has not been matched by equivalent public funding, can in retrospect be held largely accountable for the failure of the higher education sector to deliver improved numbers of better-qualified professional graduates, and particularly African lawyers.⁴ Dissatisfaction on the part of stakeholders is an indication of the failure of the four-year LLB to provide a simple answer to the problems of legal education in South Africa.

This paper aims to review the history of the degree, to consider existing imbalances within the legal profession, to review current challenges for academics, and to highlight some of the data that presents the measurable outcomes for the qualification. Criticisms of the attempts to transform the legal profession through the introduction of the undergraduate LLB have emanated mainly from the two primary stakeholder groups: the attorneys' and advocates' professions, who have expressed dissatisfaction with the quality of law graduates; and legal academics who are struggling to meet the challenges of teaching under-prepared students in a shorter time period, dealing with the constraints of dwindling resources, increased student numbers, poor student language and literacy competency and disappointing graduation rates in the degree. This overview prefigures the release later in 2010 of the anticipated research project on the effectiveness of the four-year undergraduate LLB degree, which has been undertaken by the Council of Higher Education (CHE), at the request of the South African Law Deans' Association (SALDA). The establishment of a separate Ministry of Higher Education in 2009, which has already initiated a review of the National Students' Financial Aid Scheme (NSFAS), and has also requested the CHE to investigate the possibility of increasing all three year bachelor's degrees to four year qualifications, creates the possibility that more flexible options for higher education may be developed to address the current challenges.

In the first section of this paper the general contextual setting of higher education policy-making during the post-apartheid era is described. This is followed by an overview of how the structure of legal education has provided a framework for division and stratification within the legal profession. In section three, the development of legal education in South Africa is discussed. Thereafter follow some perspectives on how the change to a constitutional democracy affected legal education, and finally a review of the effect of the undergraduate LLB on representivity in the legal profession is addressed. The current status of curriculum debates within legal education and the wider professional context, together with some considerations to guide future progress, conclude the paper.

4 Letseka & Maile 2008:3.

2. Higher education policy-making in post-apartheid South Africa

Legal education cannot be viewed in isolation from the national contextual framework of policy changes in South African higher education during the period of tumultuous social and political change in the 1990s. The change that took place must be viewed against a background of contemporaneous transformation that was taking place in all spheres of education.

The first stage in transforming higher education took the shape of “massive, participatory drives towards policy formulation” which produced a report from the National Commission on Higher Education (NCHE) in 1996.⁵ The 1997 White Paper *A Programme for Higher Education Transformation* translated the report into draft policy identifying equity, redress of inequalities, reconstruction and development as its central tenets.⁶ The Higher Education Act was promulgated in 1997.⁷ Higher education was seen not only as a means for individuals to attain private benefits through the development of their learning needs and aspirations, but also as contributing to the public good, through the distribution of opportunity and achievement among citizens. Increased and broader participation, together with responsiveness to societal interests and needs, were regarded as essential features of a transformed system.⁸ Education was seen as the vehicle that would enable citizens to participate as enlightened, responsible and constructively critical participants in the new dispensation. The development of skills and expertise required for the labour market and the growth and prosperity of a modern economy were a parallel focus. This dual discourse – addressing equity and diversity through the development of democratic values in education, while at the same time developing skills for international competitiveness in the context of economic globalisation – reflects the primarily “symbolic” characteristic of educational policy at the time.⁹

The introduction of a regulatory quality assurance framework through the enactment of the South African Qualifications (SAQA) Act¹⁰ and the establishment of a National Qualifications Framework (NQF)¹¹ created an integrated mechanism for the registration of quality-assured qualifications, according to their constituent components, in the form of acquired skills and knowledge. SAQA was to report both to the Minister of Education and the Minister of Labour, reflecting the seemingly contradictory alignment of formal academic education with vocational training. The demands made on academics to complete module templates in accordance with outcomes-based educational criteria were intended to shape higher education programmes and curricula in the direction of education for economic development, focussing on the explicit inclusion of both skills and knowledge outcomes in every module and qualification.¹²

5 Cloete & Fehnel 2002:379.

6 Department of Education, GG No 18207 3, 15 August, 1997.

7 Act 101/1997.

8 Cloete *et al* 2002:100.

9 Jansen 2002:199; Subotzky 2000:108.

10 Act 58/1995.

11 *South African Qualifications Authority Act 58/1995.*

12 Ensor 2002:273.

After the second democratic election in 1999, the CHE was requested to undertake a general review of the institutional landscape of higher education. Their report: "Towards a New Institutional Landscape" identified as challenges: effectiveness, efficiency and equity. Their proposed solutions were to establish a differentiated hierarchy of institutions and for government to consider certain institutions for "combination".¹³ As a response, the Ministry of Education issued a "National Plan for Higher Education" which prioritised increased efficiency and graduate outputs and raised the possibility of reducing the number of higher education institutions.¹⁴ The Plan acknowledged an "implementation vacuum" that had been created by the spate of policy-making in the absence of a prioritisation of objectives during the preceding years.¹⁵ In 2003, institutional mergers, with the objective of streamlining the range and location of higher education offerings, reduced the total number of universities from 20 to 11 and radically altered the picture of higher education in South Africa.

The government funding formula for higher education was changed in 2004, reflecting the severe budgetary constraints that persisted in hampering efforts to improve the quality of higher education. Law as a discipline was placed in the lowest quadrant of government education funding because of the low cost of offering legal education. Further policy making related to language policy in higher education and student enrolment planning has been undertaken since that date. The most significant recent change has been the creation in May 2009 of a separate Ministry of Higher Education, which will address the multiplicity of challenges facing this sector. A review of the National Students' Financial Aid Scheme (NSFAS) aimed at addressing the problems related to the funding of university education for historically disadvantaged students has recently released its report, which seems likely to impact on the funding of higher education, in the wake of political calls for free higher education.¹⁶ This brief overview of higher education policy-making provides a context against which to consider the framework of legal education at universities and in the legal profession in South Africa.

3. Legal education: framework for division and difference

The system of legal education that exists in South Africa consists of two distinct phases which function in tandem to prepare candidates for admission to legal practice either as an attorney or as an advocate. The initial or foundational phase of legal education consists of obtaining a law degree, the Bachelor of Laws (LLB) conferred by a university. The second phase of graduates' professional legal education is provided by legal professionals to prepare graduates for their attorneys' admission or advocates' bar examination, which are prerequisites to being admitted to one of the two branches of the practising legal profession.

13 CHE 2000.

14 Ministry of Education 2001.

15 Scott *et al* 2007:3.

16 Report of Ministerial Committee on Review of the National Students' Financial Aid Scheme: 17 March, 2010. <http://www.education.gov.za> (accessed 18 March 2010).

This dual system of the phases of education and the “divided” bar reflect the divisions, hierarchies and levels of differentiation that have dominated the history of legal education. Historical separateness, taken to its extreme manifestation in the explicit apartheid legislation, characterised much of the texture of the legal system and continues to play a role in the field of legal education, despite attempts by the democratically elected government to redress past disadvantage. As Dhlamini observed in 1992:

[O]ur legal education in South Africa was strongly influenced by the governmental policy of apartheid. This policy was not based on the idea of justice, and it had an effect on our approach to law, as well as on the relationship between law teacher and law student. As a result, our legal education was riddled with contradictions, anomalies and inconsistencies. There are various ways whereby our legal education either bolstered apartheid or was influenced by it.¹⁷

This legacy, which has its roots in the earliest development of legal education in South Africa, continues to impede the progression toward equality of outcomes. Fifteen years into our democracy, broader social issues of a failing and vastly uneven public schooling system, an ever-widening gap between the “haves” and the “have-nots,” and a continuing urban/rural schism have served to reinforce pre-existing structural divisions.

4. The development of legal education

The earliest qualification offered in law was the Law Certificate, which was taught informally by practitioners and qualified lawyers and was made a pre-requisite for practice at the Cape in 1858.¹⁸ Formal university teaching of law began at the University of Cape Town (UCT) in 1859, and the LLB degree was introduced there in 1874. The UCT Law Faculty was established as an official department within the university in 1918.¹⁹ The University of Stellenbosch Law Faculty, teaching law in Afrikaans, was established in 1921. The Stellenbosch Law Faculty offered an LLB degree which focused on practice-related subjects such as Roman Law and Roman-Dutch Law, since many faculty members were practicing lawyers. Law faculties were subsequently established in other regions of the country, following one of two curricular models: the English “liberal arts approach” which encouraged students to obtain a varied educational background in other disciplines before embarking on a law degree, or the “UNISA model” which concentrated mainly on law courses and included very few non-law subjects. The UNISA model was the pattern followed predominantly by Afrikaans and historically black universities (HBUs).²⁰

17 Dhlamini 1992:595-596.

18 Act 4/1858 and Act 12/1858 were passed by the Cape Parliament to establish a Board of Public Examiners and to regulate the admission of candidates to practice.

19 Cowen & Visser 2004:5.

20 Midgley 2007 http://www.allacademic.com/meta/p177124_index.html (accessed on 20 October 2008).

In 1934, the South African Parliament enacted the Attorneys, Notaries and Conveyancers Admission Act, to regulate the practical training of attorneys.²¹ This statute required law graduates to complete two years of articles of clerkship, where graduates would work in a law firm acquiring legal skills after obtaining a degree, prior to being admitted to practice as an attorney. On the other hand, rules relating to the professional training of advocates were not statutory in origin and varied from province to province. Graduates wishing to be admitted as advocates, rather than attorneys, were required to complete a period of pupillage, which in 2004 was increased to a fixed one-year's duration. Previously it had been six months. Pupil advocates learn advocacy skills under the close tutelage of a practising advocate, without earning any remuneration during this time, before writing a bar examination that is administered by the General Council of the Bar.²²

By the 1970s, three different types of law degrees were offered at South African universities. Firstly, most law faculties offered the LLB degree, which by then was a two- or three-year postgraduate degree which followed a Bachelor of Arts, Bachelor of Commerce or other undergraduate degree. The LLB qualified graduates for practice in both the higher and lower courts. Secondly, some faculties offered a four-year undergraduate degree, the *Baccalaureus Procuratoris* (B Proc), which qualified graduates for practice as attorneys only.²³ The B Proc degree replaced the Law Certificate which remained as a qualification for practice until 1979, permitting persons who did not have a university degree to access the attorneys' profession even after the LLB degree had been introduced.²⁴ Finally, a few faculties offered the three-year Bachelor's degree, the *Baccalaureus iuris* (B iuris), which qualified graduates for practice as civil servants (prosecutors and magistrates) in the lower courts. Graduates could choose to follow the B iuris with an LLB postgraduate degree, in which case they would also qualify to practice in both the higher and the lower courts.

Under apartheid, separate education, including university education, was provided for students according to their racial designation, with separate institutions established for white, African, Indian and coloured persons.²⁵ The universities catering mainly to African, Indian and coloured students (HBUs), were typically under-resourced and inconveniently located in rural areas so that the quality of the education provided was not comparable to that offered at the mostly urban, historically white universities (HWUs). Black students were permitted to attend white universities only if they obtained permission from the Minister of Education to do so.²⁶ This separation perpetuated a sense

21 *Attorneys, Notaries and Conveyances Admission Act 23/1934* (repealed by the *Attorneys Act 53/1979* and amended by the *Qualification of Legal Practitioners Amendment Act 78/1997*).

22 Rule 8 (amended 2004) of the General Council of the Bar, Uniform Rules of Professional Ethics. http://www.sabar.co.za/ethics_rules.pdf (accessed 7 July 2009).

23 The minimum entry requirements for the attorneys' profession were promulgated in the *Attorneys' Act 53/1979*, section 2. The minimum entry requirements for advocates were promulgated in the *Admission of Advocates Act 74/1974*, section 3.

24 Midgley 2007:4.

25 *University Education Act 45/1959* (repealed).

26 Iya 2001:358.

of different quality degrees for different races and it impacted on graduates' abilities to secure employment in top law firms. The cost of obtaining a post-graduate degree, in terms of fees and time spent without generating an income were factors that made this option prohibitive for many aspiring black lawyers. The all-pervasive exclusion on a systemic basis of Africans from superior quality legal education and the upper reaches of the legal system served to provoke resistance and protest, as well as a burning need to ameliorate the inequalities as rapidly as possible, once political change had been effected.

5. Post-apartheid changes

It is estimated that in 1994, 85% of the legal profession in South Africa consisted of white lawyers. At that time, there were only four black judges and two female judges appointed to the bench. Law curricula reflected the concerns of the economically dominant white population, with emphasis placed on commercial subjects.²⁷

With the transition to democracy in 1994, came an urgent call to transform the legal profession and legal education. Beyond dispute was the necessity of addressing the under-representation of Blacks, and more particularly of Africans, in all areas of the legal profession and of establishing a single, affordable academic qualification that would provide access to both branches of the profession. The low number of black lawyers and the high cost of a minimum of five years of study at university to become an advocate proved to be driving forces in the campaign to radically alter legal education.

In 1994 the new Department of Justice and Constitutional Development called a National Consultative Forum to include all stakeholders in the debate. In the following year, a Planning Unit of the newly formed Ministry was established to produce a strategic plan entitled "Justice Vision 2000", setting out priorities for the transformation of the entire justice system.²⁸ The guiding principles of this plan were that the justice system should reflect the new constitutional values and the policy goals of "reconstruction and development", with regard to the provision of legal services, access to justice, the structure of the professions and the courts. This document, released in September of 1997, raised questions about the funding, the focus and the purpose of legal education, but it contained no direct recommendations on the topic.²⁹ Three forums of stakeholders were arranged in the period from 1995 to 1997, to review a variety of aspects of legal practice and education and of access to justice, aimed at developing "a system of justice which is effective, efficient and accessible ... legitimate, credible and accepted by our people ... consistent with the values of a civilised and democratic society".³⁰ In a report on Law

27 McQuoid-Mason 2008:5.

28 Ministry of Justice 1995. *Justice Vision 2000*: <http://www.doj.gov.za/policy/misc/justice2000.htm> (accessed 13 July 2009).

29 Godfrey & Midgley 2008:21.

30 Minister Dullah Omar, Speech made at University of South Africa Law Faculty on 2 March 1999. <http://www.info.gov.za/speeches/1999/990511152p1004.htm> (accessed 15 November 2007).

and Legal Education in South Africa presented at the second forum, a foreign academic, Madhava Menon, commented:

Increasingly Law is likely to assume a critical role in social reconstruction in South Africa. This is envisaged by the new South African Constitution ... In the task of social integration of multi-cultural South Africa, ridden with Apartheid-induced social divisions, law and administration of justice have to take a creative and imaginative role ... It is in this context, it is submitted, the role of law, legal education and justice delivery system has to be appreciated and organised.³¹

The debates began on developing a single qualification for legal practice in order to promote equality. This was the position that was strongly supported by the Black Lawyers' Association (BLA) and the National Alliance of Democratic Lawyers (NADEL), but the historically black universities (HBUs), although in agreement with the change, raised the issue of inadequate resources and facilities to train the number of law graduates required to serve their communities.³²

The obstacles in gaining access to high quality tertiary education, together with the difficulty of obtaining articles of clerkship in urban white law firms, together with the unaffordable expense of one year of pupillage ensured that many aspiring black advocates were effectively restricted to the lower-earning levels of practice within the legal profession, such as the ranks of prosecutors and attorneys practising only criminal law. Even if they were successful in overcoming the many structural barriers within the differentiated education and legal systems, black practitioners were effectively geographically segregated during the apartheid era by being restricted to practicing in "townships" or black "homelands" through the government policy requiring separate trading areas for each racial group.³³

The further statutory requirement for all practising lawyers to have passed a university course in English, Afrikaans and Latin remained as an egregious impediment to black candidates until it was removed in 1995.³⁴ The cost and the length of time (five or six years of study) required to obtain a postgraduate LLB degree in order to qualify as an advocate resulted in that branch of the profession being dominated by white males. Further, appointment as a judge could only be made from the ranks of experienced advocates. This served to reinforce the discriminatory effect that the differential qualifications had in terms of racial, gender and socio-economic bias.³⁵

After numerous consultative forums, drawing on the widest possible base of stakeholders had been held, the Ministry of Justice determined that the consensus position was to replace all existing legal qualifications with a single four year undergraduate LLB degree. In a series of interviews with Law Deans

31 Proceedings of the Forum on Legal Education 1995:96.

32 Professor Bongani Majola (University of the North). Legal Forum on Legal Education Proceedings 1995:33-35.

33 Black Lawyers Association: <http://www.bla.org.za> (accessed 6 July 2009).

34 *Admission of Advocates Amendment Act 55/1994* section 5; *Admission of Legal Practitioners Act 33/1995* sections 1-9.

35 Godfrey & Midgley 2008:2.

who participated in those consultative forums, it was clear that many of the academics were not in favour of the change for pedagogical reasons.³⁶ They expressed a sense that their opinions had been marginalised or silenced by accusations that they were anti-transformation. Notably, the Department of National Education did not participate in the deliberation at all.³⁷ The attorneys' profession decided to support the change on condition that the explicit teaching of legal skills was incorporated into the attenuated law qualification, as this would serve their interests better.³⁸

A Task Group on Legal Education for the Restructuring of Legal Education in South Africa, selected from Law Deans representing 20 law faculties, and including representatives of the legal profession, was mandated by the Ministry of Justice and Constitutional Development in 1995 to develop proposals for a new legal education framework, based on the consensus position.³⁹ This group recommended the introduction of a single four-year undergraduate law qualification in 1996. The draft proposals noted that there was grave concern that a degree shorter than four years would lose its quality and inevitably become nothing more than a B Proc (the old four-year attorneys' qualification). It was stated that the new premises underlying the degree were that it should be a very demanding and intensive degree. Specifically mentioned were the following objectives of legal education, based directly on the 1996 Report on Legal Education from the Lord Chancellor's Advisory Committee on Legal Education in England (ACLEC 1996): intellectual integrity and independence of mind; core knowledge; contextual knowledge; legal values and professional skills. The need for flexibility of offerings and the autonomy of law faculties were entrenched, while the option of an additional foundational year for disadvantaged students was raised. Academic freedom was strongly advocated, to permit individual faculties to interpret the degree requirements as they saw fit. The proposals did not identify core courses, practical skills-training or non-law courses for inclusion in curricula, leaving these choices to individual faculties as a matter of preserving their autonomy. However, a list of recommended "core subjects" was appended to the proposals. The document was accepted at the conference of the Society of University Teachers of Law in January 1996.⁴⁰

The lack of any research preceding the introduction of this four-year LLB qualification and the failure of the Task Group to interrogate the change in any depth provoked severe criticism from certain academics.⁴¹

... [N]o suggestion was made anywhere in the text of the reports that detailed research should be commissioned and conducted with regard to the state of legal education before decisions were taken as to how the degree should be restructured. We find it difficult to understand how

36 Part of a PH D study Greenbaum 2009.

37 Midgley 2007:7.

38 Midgley 2007:7.

39 McQuoid-Mason 2004:102.

40 Proposals from the Task Group on Legal Education for Restructuring Legal Education in South Africa, based on agreement reached at a meeting of Deans of Faculties of Law, held at the request of the Minister of Justice in November 1995.

41 Woolman *et al* 1997:55.

legal academics in this country could embark on a policy transformation of such magnitude without first making an organised effort to collect and to make sense of the relevant data.⁴²

The Qualification of Legal Practitioners Amendment Act of 1997⁴³ required all universities to introduce a four-year undergraduate LLB degree, with agreement by Law Deans on the 26 “core courses” that would be incorporated into the curricula to be designed by each university. Some universities embraced the change, but others adopted strategies to discourage students, other than high academic achievers, or students who had proved themselves in their first year of undergraduate study in another faculty, from registering for the four-year LLB.⁴⁴

6. Curriculum changes

The changed legal framework in South Africa, founded upon a Bill of Rights as part of a supreme Constitution that enshrines the values of dignity, equality and democracy, would ensure that law curricula were infused with a pervasive human-rights discourse. The effects of section 39(2) of the Constitution, which requires that in interpreting any legislation, or in the development of the common law and customary law, courts must promote the spirit, purport and objectives of the Bill of Rights, have been to change much of the substantive content of many traditional law subjects.⁴⁵ The far-reaching consequences of the jurisprudence that has emerged particularly from the Constitutional Court have had a profound effect on what law students learn during their academic studies.

Although the post-1994 democratically elected government promised to redress the historical inequity of the HBUs, the reality is that this has not materialised. HWUs continue to have better facilities and more resources, which attract more students and thus increased state funding, because state subsidies are linked to student enrolment numbers. Their superior facilities make them more attractive to students and academic staff alike.⁴⁶ Many of the historically disadvantaged institutions continue to be plagued by the structural and agential legacies of the past, such as poor management, funding crises and declining student enrolments. Although these universities were often the site of resistance to the apartheid regime and the focus of political opposition to the Nationalist government, since 1994 their appeal to black students and staff has diminished as they have not been able to develop strength in meeting the new imperatives of skills development, quality research production and creating improved facilities.⁴⁷

Faculties could select how to sequence content, and space was left for electives and variation between various law faculties to allow for developing

42 Woolman *et al* 1997:55.

43 Act 78/1997.

44 Interviews conducted with Law Deans as part of a wider Ph.D. study: Greenbaum (unpublished Ph.D. thesis) 2009.

45 *Constitution of the Republic of South Africa*, 1996.

46 Cloete *et al* 2002:397-398.

47 Cloete & Fehnel 2002:396.

“niche” markets. The views of delegates to the 1995 consultative forum on Legal Education, at which the issues were debated, were influenced by their recollections of the apartheid government’s interference with academic freedom at universities. By means of legislated racism, harsh censorship laws, draconian provisions that permitted detention of opponents without access to courts, and numerous incidents of police “spying” activities on liberal campuses,⁴⁸ the apartheid government had imposed its dictates on higher education institutions. A prominent lawyer at the Forum warned the delegates:

One (because of the grievously attenuated system of university independence because of what happened in the 50s and 60s) had to guard against imposing a sort of centralized regime of university education and attempt to dictate universal curricula, whilst removing the ability of the universities to determine for themselves what they found appropriate in particular circumstances.⁴⁹

Specific skills – such as analytical skills to appreciate the relationship between law and society; language skills (including indigenous languages); communication and writing skills; legal ethics; culture, race and gender sensitivity; practice management skills; accounting skills; research skills, trial advocacy skills; computer skills – were listed for inclusion in LLB curricula. These recommendations were considered to be in line with international changes to legal education, particularly since South Africa had recently been re-admitted to the Commonwealth.⁵⁰ To some extent, the new emphasis also reflected the neo-liberalist discourse implicit in concerns related to the “high skills” agenda for globalisation and outcomes-based education which focuses not only on knowledge, but also on the imparting of skills. The effect of international politics, trade and a desire on the part of the newly democratic South African state to become part of the global economy stimulated this “skills” trend, and focussed students’ attention on employability after graduation.

It was not until 2002 that the Standards Generating Body for Legal Education and Training determined a set of exit level outcomes for the LLB degree, which were promulgated by SAQA and which reflect the integration of skills and values into the degree outcomes.⁵¹ The generic LLB qualification was registered by SAQA at NQF Level 7, with an explanation stating that:

The term generic means that the essential minimum-required outcomes and their assessment criteria have been identified in an abstract way, and are not linked to a preconceived curriculum (content) ... The qualification does not seek to make all LLB degrees identical but rather to provide a framework within which providers can be innovative and stakeholder-driven in a liberated way ... The generation of a generic LLB qualification will provide an opportunity to promote the establishment

48 *Terrorism Act 83/1967; Internal Security Act 74/1982; Publications Act 42/1974.* Article on the Police Spy List: http://www.iol.co.za/index.php?click_id=6&art_id=ct20031207101201345L232470&set_id=1 (accessed 3 October 2009).

49 Gauntlett 1995:45.

50 *ACLEC Report 1996; MacCrate Report 1992; Pearce et al (Pearce Report) 1987.*

51 GK 23845 Government Gazette 2002.

of curricula with an innovative approach to legal education in order to achieve the aims of not only inculcating knowledge in a learner, but also imparting skills and values essential for lawyers living in a democratic society (SAQA Registered Qualification and Unit Standard Home Page).⁵²

This statement reflects the reluctance on the part of academics to submit to political determination by government in curriculum making, but ironically, a generic LLB qualification also made it easier for faculties to continue doing “business as usual”. In a comparative analysis of law curricula across all current law faculties in 2009, a remarkable homogeneity existed in relation to the subjects taught, although historical institutional preferences, such as an emphasis on including non-law subjects, or the inclusion of legal skills modules as compulsory courses were evident.⁵³

7. Effect of the new LLB degree on representivity in law faculties and legal professions

Ten years after introducing the undergraduate LLB degree, the pedagogical soundness of implementing this attenuated LLB degree was questioned by law academics and practitioners⁵⁴. Law graduates were described as being “poor”, and deficient in numeracy and literacy skills.⁵⁵ Today, the anticipated outcome of increasing African representation in both branches of the legal profession by offering the undergraduate LLB degree as a single, affordable qualification has not yet been met. A recent survey indicates that 80.2% of law firms are still owned by whites.⁵⁶

Figure 1 indicates the relative distribution by race of attorneys in South Africa in 2008. This chart vividly illustrates the perpetuation of racial imbalances within the attorneys’ profession which may be attributable, to some extent, to the inclusion of a significant number of ageing professionals who were in practice prior to 1994. The four sets of vertical bars represent data from each of the four regional law societies: the Cape Law Society, the Free State Law Society, the Law societies of the Northern provinces and the KwaZulu-Natal Law Society, with the bar colours which distinguish the various race groups plainly demonstrating the predominance of white attorneys in every regional area.

52 SAQA. <http://regqs.saqa.org.za/viewQualification.php?id=22993> (accessed 3 December 2008).

53 Greenbaum 2009.

54 Van der Merwe 2007:2; Statement on Legal Education by the National Liaison Meeting between the Legal Professions and SALDA, 13 October 2006; SALDA: Review of the LLB Degree, 2005.

55 “Law Graduates ‘Poor’” Article: http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_2093220,00.html. (accessed 12 November 2007). The Department of Justice Director-General, mentioned in the same article, criticised the drafting skills of graduates.

56 National Survey of the Attorneys’ Profession: LSSA 2008:6.

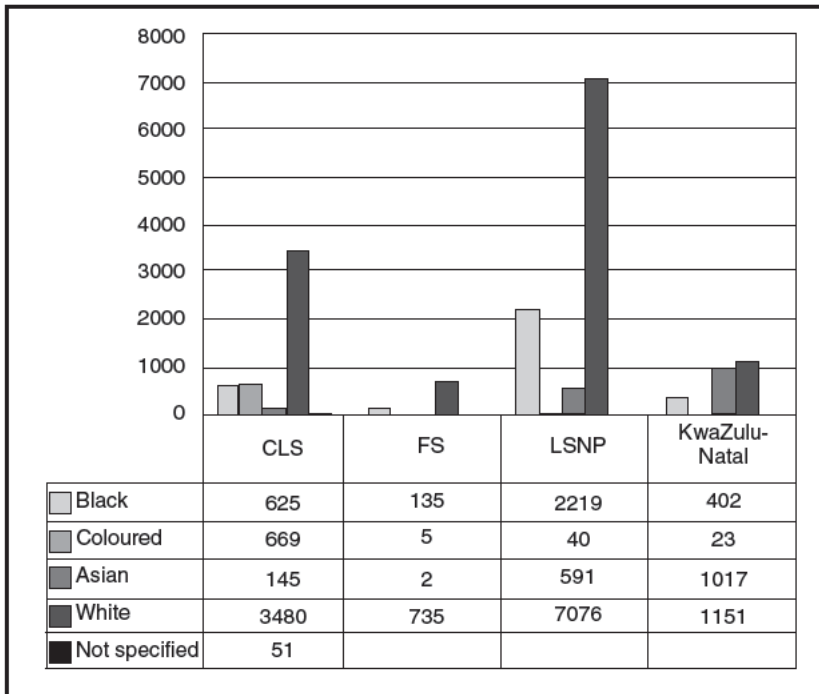


Figure 1: Practising attorneys by race 2008 (Data from Law Society of South Africa (LSSA): Legal Education and Development (LEAD) Statistics: July 2009)

In relation to student enrolments in higher education, data for 1994 showed that gross participation rates in higher education for the 20–24 age group had been: 9% African; 60% White; 33% Indian and 11% Coloured.⁵⁷ These 2005 data (Figure 1 below) show that despite a slight increase in the number of African and coloured students enrolling in higher education, the percentage of students from those groups, in relation to the national demographics within that age group in higher education, remains totally unsatisfactory.

57 Bunting 1994:39.

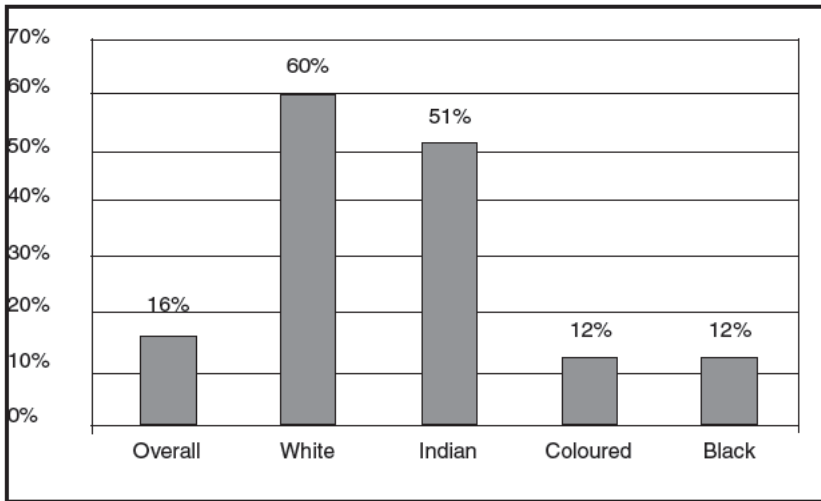


Figure 2: Participation rates: total university student enrolment in 2005 as % of 20-24 age group⁵⁸

Overall within the higher education sector in 2007, the number of African participants represents about half of the registered student population, which has been more-or-less consistent since 2000. But the absolute numbers as shown in Table 1, are telling. Total university participation has increased by 31%, with a 34% increase in African students.

Table 1: Equity profile of undergraduate degree enrolments⁵⁹

	African	Coloured	Indian	White	Female	Male
2000	144776	14137	26102	97846	151067	131933
	51%	5%	9%	35%	53%	47%
2001	162424	16090	28279	106259	166165	146959
	52%	5%	9%	34%	53%	47%
2002	175194	18730	31332	113224	181016	157551
	52%	6%	9%	33%	53%	47%
2003	178615	21527	34457	117669	188989	163450
	51%	6%	10%	33%	54%	46%

58 Bunting 1994:39; Scott *et al* 2007.

59 Scott *et al* 2007

	African	Coloured	Indian	White	Female	Male
2004	169742	23086	36500	115409	188246	157108
	49%	7%	11%	33%	55%	45%
2005	170772	24042	37358	115654	190791	157645
	49%	7%	11%	33%	55%	45%
2006	181265	25438	36960	116208	198983	161589
	50%	7%	10%	32%	55%	45%
2007	194144	26405	35177	113690	204321	165879
	52%	7%	10%	31%	55%	45%

The identification of goals alone, such as increasing the representivity of the legal profession through the enactment of legislative policy that established a single affordable degree for access to both branches of the profession has succeeded in part only. Statistics from the Law Society of South Africa for 2008 reflect an increasing enrolment of African graduates for the LLB degree, at first-year level in Law faculties over the past few years (Figure 2).

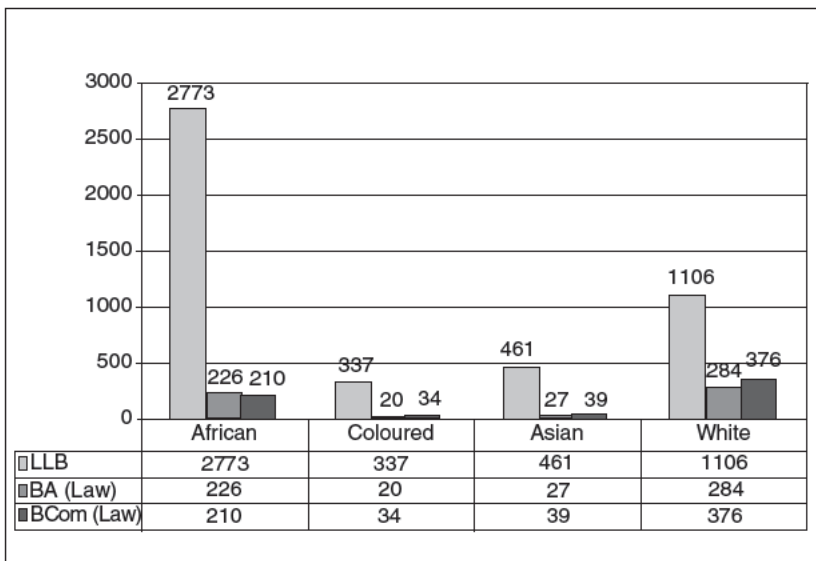


Figure 3: First-time 1st-year registrations of Law students at South African universities: 2008 (Data from Law Society of South Africa: Legal Education and Development Statistics: July, 2009)

At first glance Figure 2 suggests that the number of African students registering for Law represents a satisfactory enrolment level. Similarly, the number of Africans graduating from law faculties has increased substantially, although there are still more white law graduates than any other group as shown in Figure 3. Unfortunately this data indicates that the graduation rate of African students is far lower than it should be, when comparing enrolment rates with graduation rates.

Letseka and Maile, in reviewing the high university dropout rate in South Africa in 2008, note the wide disparity in graduation rates between white and black students, which they attribute to the historical legacy of apartheid policies and issues of poverty and financial pressure for students from poor socio-economic backgrounds. They comment that:

... low levels of public funding for tertiary education translates into higher fees, effectively shutting out the poor ... the rapid increase in tertiary enrolment means that public funds per student remain lower than a decade ago. Steep university fees contribute to the continued under-representation of black students, which threatens to replicate racial inequality in higher education well into the future ... NSFAS loans to students averaged only R10 000 in 2005 - a fraction of the cost of a university degree.⁶⁰

The composition of LLB graduates in 2008 reflected an increasing number of African graduates (Figure 3) but as a reflection of the demographics of the total population of the country these statistics indicate a continuing over-representation of white and Indian graduates.

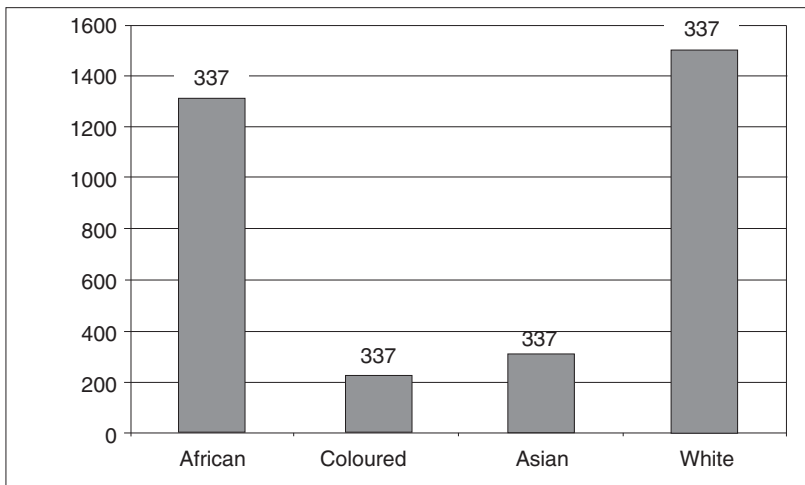


Figure 4: LLB graduates by race 2008 (Data from Law Society of South Africa: Legal Education and Development Statistics: July, 2009.)

A study of student dropout rates in South African higher education, based on enrolments in 2000, determined that approximately 30% of students

60 Letseka & Maile 2008:3.

dropped out in their first year of university; a further 20% dropped out in their second and third years of study.⁶¹ Of the 50% who remained studying, less than half (22%) graduated within the minimum time period for the degree.⁶² By the end of 2004, that is, five years after entering university, only 30% of the total number of first-time entering students had graduated; a further 8% graduated after an additional year. Of the initial students, 56% had left their original institutions without graduating, and 14% were still in the system. In this year cohort, 65% of African students dropped out and only 24% graduated, while 41% of white students dropped out and 48% graduated. In terms of success rates, although white students' success rate is low, African students continue to under-perform in comparison to white students. In 2006, the success rate of African students had increased to 65%, while that of white students was 77%. Of particular concern for legal education is the following data which documents the success rate of graduates in four-year professional undergraduate degrees in 2004, according to discipline (Figure 5):

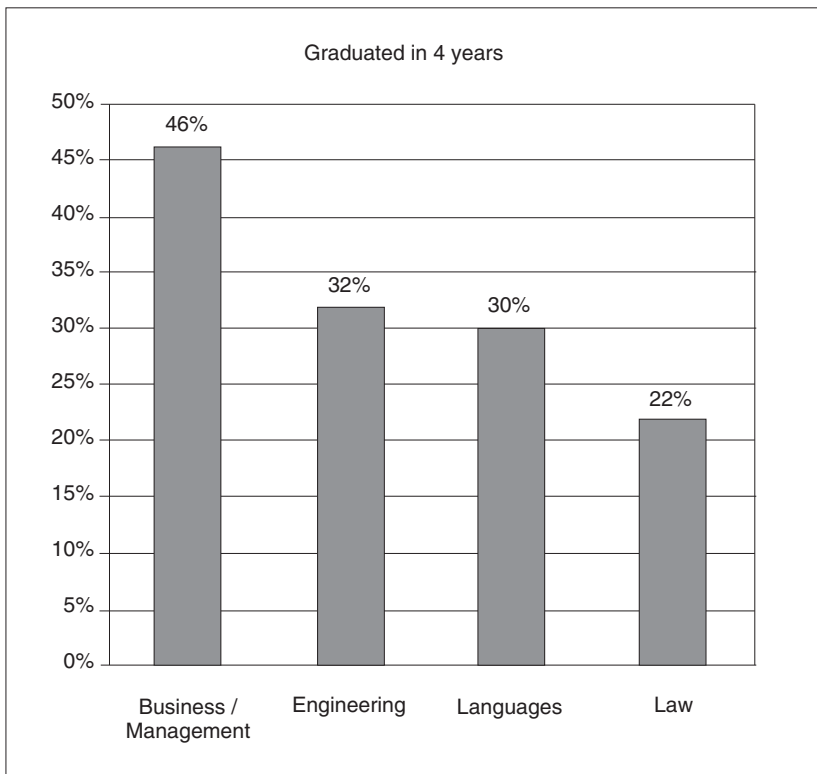


Figure 5: Graduated in regulation time: professional first B-degrees (excluding UNISA)⁶³

61 Scott *et al* 2007:26.

62 Letseka & Breier 2008:88.

63 Scott *et al* 2007:26

Figure 6 compares the percentages of students in those same discipline areas who took longer to complete their degrees:

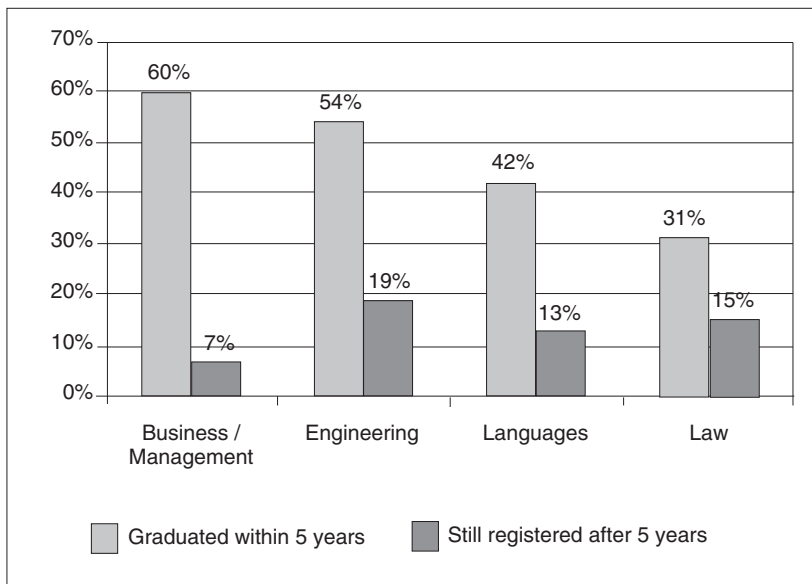


Figure 6: Professional first B-degrees, all first-time entering students (excluding UNISA)⁶⁴

Fourteen percent of black law students graduated in the minimum period for the degree while 33% of white students completed their LLB degree in four years; thus a total of only 22% of all law students graduate in the required time. What is evident is that 46% of all law students are taking at least one year or more than the stipulated minimum time period for the LLB degree, and 15% are still registered after five years. 21% of black law students graduate after five years and 48% of white law students graduate after five years.⁶⁵ These statistics translate into significant cost implications for students from poor backgrounds. The data undermines one of the key motivating reasons for introducing the undergraduate LLB.

Historical inequalities in students’ educational backgrounds play an important role in their success rates at university.⁶⁶ In addition, the mother tongue of most African students is not English or Afrikaans, which are the two languages of instruction at institutions of higher education in the country. Educational and socio-economic background (where continuing poverty aligns closely with race), coupled with the funding difficulties that frequently confront black students at university, tend to reinforce a cycle of disadvantage which perpetuates the racial inequalities within the legal professions. This “snapshot”

64 Scott *et al* 2007:13

65 Scott *et al* 2007:26.

66 Scott *et al* 2007:23.

of the state of legal education at universities and in the attorneys' profession puts the focus all the more sharply on the broad question of whether the current LLB degree is serving the needs of our society.

The conclusions to be drawn here are that although transformation of the legal profession appears to be taking place through an increase in the number of African lawyers overall, albeit at a slow pace, the success rate of African students who enrol as aspiring lawyers mirrors the disturbing trends that beset the whole of the higher education sector in South Africa. Despite improved enrolment rates and increasing participation by previously disadvantaged students, in the overall climate of unsatisfactory participation and poor achievement in higher education the retention and success rates of these students at universities, and in law faculties more particularly, is disappointing. The summation of Scott *et al* is disturbing:

However, since it is successful completion that really matters for individuals and the country, equity of outcomes is the overarching challenge. The major racial disparities in completion rates in undergraduate programmes, together with the particularly high attrition rates of black students across the board, have the effect of negating much of the growth in black access that has been achieved. Taking account of the black participation rate, the overall attrition rate of over 50% and the below-average black completion rates, it can be concluded that the sector is catering successfully for under 5% of the black (and coloured) age-group.⁶⁷

The Ministerial Report on Transformation, Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions (hereafter *Transformation Commission Report*, Ministerial Committee on Transformation, 2008) recorded numerous conversations with black students who identified poverty as a key feature in contributing to student attrition. The alignment of poverty with race is not coincidental in the context of South Africa's history, although recent commentary has noted that race and educational disadvantage are no longer so closely correlated.⁶⁸ Le Roux and Breier (2007) propose that indicators other than race ought to be included as indicators of applicants to higher education who qualify as "disadvantaged". The *Transformation Commission Report* also identifies language as an obstacle to success for African students. A black student at one university commented: "Language is a major stumbling block, especially at undergraduate level. Basic language skills are of critical importance if students want to make an impact and not just pass". The *Transformation Commission Report* concludes:

The lack of epistemological transformation is further reflected in the role of language in higher education. The observation that "the language issue is at the heart of the education crisis in our society" may be an overstatement, as there are many other factors that contribute to the

67 Scott *et al* 2007:19.

68 Le Roux & Breier 2007:4.

education crisis. But the language issue is undoubtedly one of the main obstacles to academic success for the majority of black students.⁶⁹

In the absence of any empirical evidence to substantiate whether progress is being made with curricular or pedagogical interventions in the discipline of Law, to address poor student pass rates and serious writing deficiencies, academics, in my view, are caught between the contesting demands of the legal profession who wish to have “practice-ready” lawyers emerge from universities, and the real challenges faced in lecture rooms every day.

My personal interpretation is that we have reached an *impasse* that will require significant investment by government in education at schooling level and, in the immediate term, in higher education, if universities are to meet the demands of producing skilled graduates who can contribute to the national development agenda and become agents of transformation themselves. The conflicting tensions between producing more skilled graduates when students entering university are less prepared than ever before for tertiary education, in a context of massification, increased class sizes and dwindling material resources for implementing effective curricular and pedagogical strategies, cannot be resolved without a re-visioning of fundamental assumptions.

Interim results from the first pilot phase of the National Benchmark Tests Project (NBTP, 2009)⁷⁰ state that the challenges facing universities in South Africa are “enormous”, and “strongly suggest that higher education institutions need to provide extensive support in language development for almost half of registered students.”⁷¹ These features within the sector provide evidentiary support for the arguments that are raised in the current debates around the law curriculum in South Africa.

8. Present status of curriculum debates: SALDA and the stakeholders

The replacement in 1997 of the traditional stratified academic qualifications route with a single LLB degree was seen, in the context of political pressure at that time, as the means to transform legal education. It was viewed as a vehicle to incorporate the views of previously excluded role players, such as the HBUs, the Black Lawyers’ Association (BLA) and the National Alliance of Democratic Lawyers (NADEL), to widen access at tertiary level to previously disadvantaged candidates, to reduce the financial costs of entering the legal profession, and to improve the overall representivity of the profession.

Controversy and debate about the soundness of a four-year undergraduate curriculum have surrounded the degree since its inception. Crisis summits on

69 *Transformation Commission Report* 2008:101.

70 Report from University World News, Africa Edition: <http://www.universityworldnews.com/article.php?story=20090816082047397> (accessed 17 August 2009).

71 “Varsity Students Lack Essential Skills”. http://www.iol.co.za/general/news/newsprint.php?art_id=vn20090811032838988C73. (accessed 11 August 2009).

this topic have been held,⁷² members of the legal profession grow increasingly vocal about the poor literacy and numeracy skills of graduates, and academics meanwhile bemoan the need to telescope a substantial amount of “essential” content into four years of study.⁷³ The attorney’s profession is currently reviewing legal education, while the South African Law Deans’ Association has approached the Council for Higher Education (CHE) to undertake research as part of their wider curriculum review project, on the current LLB degree.⁷⁴ Complaints about the quality, even, of recently appointed judges have evoked public scrutiny of legal education and raised debate amongst other stakeholders within the legal world. A comment from an academic explains that the background to the problem of the quality of judges and how it affects the future development of the law:

... the problem is in my view more fundamental and far reaching as it also concerns the standard of and approach to legal training at tertiary level. There is an over-production of legal graduates at the expense of quality and a perceived crisis as far as legal training is concerned causing a decreasing pool of adequately equipped persons for ultimate appointment to the judiciary. Incumbent judges need to be especially careful and meticulous when dealing with matters and areas of law and practice with which they are not fully familiar. After all, the development of valid and equitable law and the destiny of the law and that of all litigants are in the hands of judges. This is a duty which has to be approached with the same skill and dedication as required of a surgeon as the failure to do so usually has far-reaching consequences for the law and those concerned.⁷⁵

A meeting was called by SALDA in June 2008, inviting all stakeholders, including representatives from the Departments of Justice and Education, to establish a Joint Task Team in order to poll all stakeholders on their views concerning the current state of legal education in South Africa.⁷⁶ The Task Team met in August 2008⁷⁷ to draft assumptions and questions that were sent out to all stakeholders. The result of the poll was presented at the National Legal Education Liaison Meeting (held annually between the Legal Professions and SALDA) in November 2008.

At the same time, SALDA met with the Chief Executive officer of the CHE, who offered to undertake a research project focussed on legal education. The Joint Task Team (August 2008) would form a wider reference group for consultation with the research team from the CHE, while representatives from SALDA liaised with the research team in developing a research proposal.

72 Summit on the Competence of Aspiring Legal Practitioners, Johannesburg, 1 October 2004.

73 Scott 2006:733.

74 LSSA: LEAD Meeting at O.R Tambo Airport, 8 November 2007.

75 Comment by Professor H Kloppers, University of Pretoria. <http://www.legalbrief.co.za> (accessed 5 November 2008).

76 Meeting at UNISA, 5 June 2008.

77 Joint Task Team Meeting on Legal Education. Witwatersrand University Law School, 25 August 2008.

The draft proposal “The LLB and the Preparation of Law Graduates in South Africa” was approved in July 2009 by the wider reference group. The proposal made the point that it was not simply the needs of the profession that should inform curriculum decisions; individuals’ needs for self-fulfilment and national needs for social justice, too, are important considerations in curriculum design and development. An electronic survey of members of the legal profession, academics and law graduates has been undertaken by the CHE, with the goal of surveying 10 000 recipients. This study has been welcomed by the attorneys’ profession and the research report is due for release in the second half of 2010.⁷⁸

9. Conclusion

In attempting to track the effectiveness of the law curriculum by means of surveying the widest possible range of stakeholders it is possible that issues which will be raised will be the quality of current law graduates, the level of legal skills which they acquire during their university studies, and the possibility of adding an additional year to the study period, in line with the wider national debate as to whether all undergraduate degrees ought to be extended to four years. It is impossible to guess whether the cost implications of such a decision would have the support of government. This option should also include the possibility that some students would be permitted to “fast-track” their studies and complete the LLB in the minimum time period. Overall, a more flexible curriculum structure, adaptable to suit the level of preparedness of incoming students might be the solution to the difficulties that beset the higher education sector, while a better alignment, defining more clearly the functions of university education and the professional training phase of law graduates in preparation for legal practice, between educational stakeholders would undoubtedly benefit legal education.

Epistemological access, more than mere increased access to tertiary education, efforts to address existing literacy and language problems, and fundamental curricular transformation, to address the under-preparedness of students from poor educational backgrounds are systemic factors that demand attention. The *Higher Education Monitor* urges the need for greater articulation between the phases of learning in order to achieve continuity in student education. Closer alignment between the academic readiness of high school students at the interface with the demands of tertiary study highlights a structural failing in the education system. The report suggests that this could be addressed by the provision of appropriate support for students to make the transition successfully, as well as adjustments to educational approaches through flexible curriculum planning and pedagogical approaches.⁷⁹

78 Legalbrief: 23 February, 2009. http://www.legalbrief.co.za/publication/archives.php?mode=archive&p_id=Legalbrief-Today&issueno=2506&format=html. (accessed on 23 February 2009).

79 Scott *et al* 2007:50.

“Equity-related educational strategies” will become a key element in contributing toward development.⁸⁰ Improving formal access to universities without enhancing *epistemological access*, which in this context implies “more than introducing students to a set of a-cultural, a-social skills and strategies to cope with academic learning and its products”, will not be sufficient to improve the success and retention rate of students in higher education. Unless students are explicitly made aware of the conventions and rules of what counts as academic knowledge, including the use of appropriate academic language, the current inequities will no doubt persist.⁸¹

Legal academics are acutely aware of the difficulties that currently beset legal education. Their participation in wide-ranging consultative debate with government and educationalists, as well as the broader range of stakeholders beyond the confines of universities could generate a timely revisioning of legal education in South Africa. A significant amount of empirical data that is now available regarding the four-year LLB degree could inform such deliberations for the benefit of all. As a matter of urgency, a national colloquium to interrogate the research report that the CHE will produce would appear to be a productive response to the pitfalls and problems that are currently challenging South African legal education.

80 Scott *et al* 2007:50.

81 Boughey 2005:241.

Bibliography

ACLEC

1996. *First report on legal education and training*. England: Lord Chancellor's Advisory Committee on Legal Education and Conduct.

BARNETT R AND COATE K

2005. *Engaging the curriculum in higher education*. Berkshire, England: Society for Research into Higher Education and Open University Press.

BLACK LAWYERS ASSOCIATION

<http://www.bla.org.za> (accessed 6 July 2009).

BOUGHEY C

2005. From equity to efficiency: Access to higher education in South Africa. *Arts and Humanities in Higher Education*:65-71.

BUNTING I

2002. Funding. In: Cloete, Fehnel, Maassen, Moja, Perold & Gibben (eds) *Transformation in Higher Education: Global Pressures and Local Realities in South Africa*. Cape Town: Juta

CLOETE N AND FEHNEL R

2002. The emergent landscape. In Cloete *et al.* (eds) 2002: 378-405.

CLOETE N, FEHNEL R, MAASSEN P, MOJA T, PEROLD H AND GIBBON T (EDS)

2002. *Transformation in higher education: Global pressures and local realities in South Africa*. (Volume 4). Cape Town: Juta

KLOPPERS H

University of Pretoria. <http://www.legalbrief.co.za> (accessed 5 November 2008).

COWEN D AND VISSER D

2004. *The University of Cape Town Law Faculty: A History: 1859-2004*. Cape Town: UCT Press.

DHLAMINI C

1992. The law teacher, the law student and legal education in South Africa. *South African Law Journal* 109:595-612.

ENSOR P

2002. Curriculum. In Cloete *et al.* (eds) 2002: 179-193.

GAUNTLETT J

1995. Proceedings of the legal forum on legal education, Cape Town, 21-22 April.

GODFREY S AND MIDGLEY R

2008. *Scarce and critical skills research project: Law professionals*. Department of Labour: South Africa.

GREENBAUM LA

2009. The undergraduate law curriculum: Fitness for purpose? Unpublished Ph D thesis. UKZN. Faculty of Education.

IYA P

2001. The legal system and legal education in South Africa: Past influences and current challenges. *Journal of Legal Education*:355-362.

JANSEN J D

2002. Political symbolism as policy craft: Explaining non-reform in South African education after apartheid. *Journal of Educational Policy* 17(2):199-215.

KENNEDY D

1983 (republished 2004). *Legal education and the reproduction of hierarchy: A polemic against the system: A critical edition*. New York: New York University Press.

KRAAK A (ED)

2000. *Changing modes: New modes of knowledge production and its implications for higher education in South Africa*. Pretoria: Human Sciences Research Council.

“LAW GRADUATES ‘POOR’”

http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_2093220,00.html. (accessed 12 November 2007).

LE ROUX P AND BREIER M

2007. *Steering from a distance: Funding mechanisms and student access and success in higher education in South Africa*. Paper presented at First Annual SANORD Centre Conference: Higher Education and Development: Shifting Challenges and Opportunities.

LEGALBRIEF

23 February, 2009. http://www.legalbrief.co.za/publication/archives.php?mode=archive&p_id=Legalbrief-Today&issueno=2506&format=html. (accessed 23 February 2009).

LETSEKA M AND BREIER M

2008. Student poverty in higher education: The impact of higher education dropout on poverty. In Maile (ed) 2008: 83-101.

LETSEKA M AND MAILE S

2008. High university drop-out rates: a threat to South Africa's future. HSRC Policy Brief. <http://www.hsrc.ac.za/Document-2717.phtml> (accessed 9 April 2010).

MACCRATE REPORT

1992. *Legal education and professional development. An educational continuum: Report of the task force on law schools and the profession: Narrowing the gap (The MacCrate Report)*. American Bar Association Section of Legal Education and Admissions to the Bar.

MAILE S (ED)

2008. Education and poverty reduction strategies: issues of policy coherence: Colloquium proceedings. Cape Town. HSRC Press. 83-101.

MCQUOID MASON DJ

2004. Developing the law curriculum to meet the needs of the 21st century legal practitioner: A South African perspective. *Obiter* (1):101-108.

2008. Transforming legal education for a transformed society: The case of South Africa. Paper presented at the International Conference on the Future of Legal Education (Atlanta, GA). <http://law.gsu.edu/FutureOfLegalEducationConference/ppt/Friday%20220208/McQuoid-Mason220208.ppt> (accessed 27 May 2009).

MIDGLEY R

2007. Paper “*Transforming legal education: recent developments in South Africa*.” http://www.allacademic.com/meta/p177124_index.html (accessed 20 October 2008).

MINISTRY OF JUSTICE

1995. Justice Vision 2000: Five Year National Strategy for Transforming the Administration of Justice and State Legal Affairs. <http://www.doj.gov.za/policy/misc/justice2000.htm> (accessed 13 July 2009).

OMAR D

Speech at UNISA Law Faculty. 2 March 1999. <http://www.info.gov.za/speeches/1999/990511152pl004.htm> (accessed 15 November 2007).

PEARCE D, CAMPBELLE E & HARDING D

1987. *Pearce Report*. Pearce, D, Campbell, E and Harding, D (1987). Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission. Sydney: Commonwealth Tertiary Education Commission.

POLICE SPY LIST.

http://www.iol.co.za/index.php?click_id=ct20031207101201345L2324708s_et_id=1 (accessed 30 October 2009).

REPORT OF MINISTERIAL COMMITTEE
ON REVIEW OF NATIONAL STUDENTS'
FINANCIAL AID SCHEME.

17 March 2010. <http://www.education.gov.za> (accessed 18 March 2010).

REPORT FROM UNIVERSITY WORLD NEWS
Africa Edition: <http://www.universityworldnews.com/article.php?story=20090816082047397> (accessed on 17 August 2009).

THE MINISTERIAL REPORT ON
TRANSFORMATION, SOCIAL COHESION AND
THE ELIMINATION OF DISCRIMINATION IN
PUBLIC HIGHER EDUCATION INSTITUTIONS
2008. (Soudien Report).

SAQA.

<http://regqs.saqa.org.za/viewQualification.php?id=22993> (accessed on 3 December 2008).

SCOTT I, YELD N AND HENDRY J
2007. *Higher Education Monitor: A case for improving teaching and learning in South African higher education*. Council on Higher Education.

SCOTT S

2006. Knowledge production and transmission in a changing society: Challenges facing law lecturers in a distance education environment in South Africa. *South African Journal of Higher Education* 20(5):731-743.

SUBOTZKY G

2000. Complementing the marketisation of higher education: New modes of knowledge production in community-higher education partnerships. In Kraak (ed) 88-127.

THE STAR

2009. Varsity Students Lack Essential Skills. http://www.iol.co.za/general/news/newsprint.php?art_id=vn20090811032838988C73. (accessed 11 August 2009).

UNIFORM RULE OF PROFESSIONAL
ETHICS.

http://www.sabar.co.za/ethics_rules.pdf (accessed 7 July 2009).

VAN DER MERWE P

2007. The trouble with LLB graduates. (Editorial). *De Rebus*, April: 2.

WOOLMAN S, WATSON P AND SMITH N
1997. "Toto, I've a feeling we're not in Kansas anymore": A reply to Professor Motala and others on the transformation of legal education in South Africa. *South African Law Journal* 114(1):30.