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INDEX

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Legal education in transition: A study from Georgia*

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Summary

The purpose of this paper is to provide an insight into the development of legal education in Georgia in its transition to becoming a democratic country. It is important to clarify at the outset that the emphasis here is on developing a viable structure and system for legal education as opposed to a theoretical basis for the development of a new legal order. Such a fundamental doctrinal exercise would form the academic and intellectual basis of an entirely different paper. In establishing a viable system of legal education, a significant challenge is to reconcile the education of professionals with the underlying difficulty arising where governments have sought to determine professional education from ideological positions. The Georgian government is producing reform proposals which have to be considered in terms of the most expedient processes for implementation. It is therefore necessary to develop reforms which construct a new framework to facilitate and promote the incorporation of aspects of legal education which hitherto have been unknown. Fundamental principles have to be determined such as recognition of the rule of law, as well as the knowledge and training best suited to developing a coherent and properly established legal profession. The whole reform process can be hindered without the presence of

well-qualified professionals. It is therefore crucial to ensure the integrity of establishing this body of professionals who are well-placed to take reforms forward. There is of course the obvious paradox in terms of the country needing the best professionals whilst at the same time putting reforms in place to achieve that. There are great possibilities and Georgia is in the position of considering systems and structures which best suit its needs in establishing reform of the educational infrastructure in which professionals can develop. The paper identifies some key issues and themes which provide an insight into the possibilities. It focuses on three main areas: the changing nature of the constitution and the need for reform, the United Kingdom framework as a possible model for consideration in establishing a process of implementation, and aspirations for the future. It is self evident that Georgia is experiencing a period of significant development and change in terms of shaping a system for legal education which is significantly more advanced even now than when this work began. It continues to be in the process of being formed and there are many influences on its shape. The authors, having worked together, acknowledge there are limitations in terms of producing a fully comprehensive joint paper based on a period of such complex transition and change.

Contents

Background and the need for reform

[Impact of the 1990s on change](#)

[The effect of the Rose Revolution](#)

[The regulation of legal education in England and Wales.](#)

[Ensuring participation of major stakeholders](#)

[One regulatory body or many?](#)

[Establishing fundamental principles of legal education for a country in transition](#)

[A Regulatory Agency \(RA\) could determine the:](#)

[Accreditation](#)

[Regulatory provisions](#)

[Admission](#)

[Continuing professional development](#)

[Conclusion](#)

Background and the need for reform

The history of legal education in Georgia goes back to the beginning of the 20th century when the first university was created. It did not have a chance to exist as an independent school and after the communist invasion it became a tool of government propaganda. Legal education was closely linked with the law enforcement agencies and was transformed into a law enforcement training school. The law school as well as many other humanitarian professions was heavily controlled by government and that affected the quality of education. Being part of an ideological machine, lack of institutional independence of higher education institutions meant there was never the chance for legal education to diversify and develop, although it was one of the most prestigious among other professions and still is.

Impact of the 1990s on change

The situation changed in the 1990s. The environment was liberalized, new schools were allowed and it led to a boom in legal education. It is difficult to judge the quality of the education in newly created schools but we can say that more than 300 higher education institutions were created and nearly all of them had a legal education component. In this environment there was no control over curriculum methodology nor were there any standards for these schools. From a Georgian perspective it is felt that diversity was allowed but the teaching quality lowered. This was not only the case for newly created law schools but also for the traditional universities. The number of young teachers and lecturers was limited in the universities and corruption led to the existence of non-qualified staff. Furthermore, old professors had not sufficient knowledge of the new legal environment being created by the young generation of lawyers. The lack of library and other related resources also affected the larger universities. So we can say that legal education was destroyed, but it was not the only target. The whole of higher education was affected by general mismanagement, corruption and inefficiency of government policies.

The effect of the Rose Revolution

The Rose Revolution in 2003 brought fundamental changes in the field of education. The proposed reform agenda includes not only liberalization of regulation and granting full autonomy to the higher educational institutions, but also reform of funding system and promotion of wider academic freedom. The main aim of the reform process is to bring Georgian higher education system close to Bologna process. (The European Law Faculties Association (ELFA) exists in part to deal with this level of regulation.) The first steps have already been taken and there is a law that sets the reform agenda, as well as concrete steps taken concerning to institutional accreditation and decentralization of institutions, limiting state control. As a result of the immediate reform the number of universities was downsized to 110 and two years limit was set for the universities, to be expired in 2007 to change management systems and improve institutional capacity. The legal education received special attention from government and was included as part of the bigger legal reform agenda. There is consensus and understanding of importance and need of legal education reform. It is agreed that without reformed law schools it will impossible to have qualified legal staff that will be capable of carrying and supporting transitional process in the country. The new developments bring new challenges in order to:

- Create basic standards of legal education that will be recognized by the profession
- Create a regulatory body for education
- Train professionals for the new school
- Develop new teaching methodologies involving practical learning tools
- Create resource centers
- Create effective monitoring from regulatory body
- Create link between business and education

The regulation of legal education in England and Wales.

This provides a possible model which might provide the basis for exploring an appropriate system for a country in transition. As far as higher education in England and Wales is concerned, quality and standards of education are provided through the Quality Assurance Agency (QAA) www.qaa.ac.uk. It publishes a series of materials which can be obtained from the website. They have an audit system for ensuring that higher education institutions comply with the standards and quality regarding the provision of higher education. The QAA has a very close relationship with the university funding councils who have a statutory responsibility for ensuring that provision is made for assessing the quality of education they fund. This forms the basis of the relationship between the QAA and the funding councils. In England, the funding body is the Higher Education Funding Council (HEFCE) www.hefce.ac.uk.

Under the Courts and Legal Services Act 1990 (as amended) (CLSA) the Law Society www.lawsociety.org.uk (regulates legal training for solicitors) and the Bar Council www.barcouncil.org.uk (regulates the training of barristers) are responsible for providing regulations in respect of these two professional bodies. Together the Law Society and the Bar Council have produced a Joint Statement which covers the academic stage of legal education. Each professional body then provides for intending solicitors and barristers at the vocational stage of training. The Joint Statement is approved by the Lord Chancellor under the provisions of the CLSA.

Ensuring participation of major stakeholders

Stakeholders include, the regulatory bodies regarding general standards and quality, the professional bodies, legal educators, law practitioners, employers and students. The UK has a legal education body, the UK Centre for Legal Education (UKCLE) www.ukcle.ac.uk which offers independent information and guidance to stakeholders. This is a very good example of how stakeholders can exchange views, information and expertise. In addition there are law academic bodies such as the Society of Legal Scholars (SLS), the Association of Law Teachers (ALT) and the Socio-Legal Studies Association (SLSA). These academic bodies are also able to form a focus of debate and understanding as well as advising the professional bodies on consultation relating to legal education. A further group is the Committee of Heads of University Law Schools (CHULS) who also respond in consultation with other stakeholders.

Participation can be achieved through setting up conferences and seminars for open discussion to take place from which policy can be derived. Sharing ideas and working towards a common purpose through discussion and consensus allows all participants the opportunity to be heard and for final decisions to be made.

One regulatory body or many?

If there is only one regulatory body the risk is that there is too much centralisation of power and insufficient balance of interests. The formal regulatory bodies in England and Wales are identified below. It would be necessary to consider each of their roles and then to decide which ones could be associated with each other either formally or informally as best fits Georgia's needs. In any event it would be necessary to ensure a measure of impartiality with regard to monitoring compliance. The QAA provides a considerable amount of materials on how higher education quality and standards are

regulated. The Law Society and the Bar Council also have clearly articulated regulations.

In summary, regulation occurs mainly through:

- Government funding of universities through HEFCE
- Standards and quality are assured through QAA
- Legal education regulated by the Law Society and the Bar Council
- Universities written academic rules and regulations in assuring standards and quality is maintained

Advisory bodies which disseminate information and consult on the interests of law academics and developments in legal education include:

- UKCLE
- CHULS
- SLS
- ALT
- SLSA

Establishing fundamental principles of legal education for a country in transition

The fundamental principle of the rule of law is vital to the foundation of establishing the profile of the lawyer. This assumes that there is integrity in the law and everyone is within the law. If it is found that the law is defective the lawyer must have the ability to challenge the law. It is necessary that such a person is intellectually suited to the profession, and must demonstrate integrity, honesty, respect and professional ethics. It is also necessary to be aware of international and global perspectives and to be able to take a world view. Lawyers must take a socially responsible approach to their work and be aware of the wider socio-political context so as to bring necessary change to the existing socio-political legal framework. There is, within this principle, an understanding that there are rights and responsibilities. Lawyers are required to navigate different legal systems and democratic processes. This will enable them to gain insight into the wider world and identify best practice which can be incorporated into the national legal system. Furthermore, lawyers should be fully equipped to understand the separation of powers and how state institutions operate. This requirement recognizes the need for checks and balances and how the legal process works. Lawyers need to engage at various stages of the legal system and acquire the ability to work effectively in developing legal practice and the law. The lawyer will be active in law reform working with a range of legal sources including statutes, cases and conventions with reference to national law and international law. Legal education aims to develop an awareness and understanding of different systems of government and the institutions which are associated with government.

In addition to the subject areas it is anticipated that there will be clear opportunities for there to be a strong interface between the academic study of law and legal practice. Two elements facilitate this objective namely, work-based learning and clinical legal education. It is suggested that in principle, an entire law degree can be taught from the doctrinal or socio-legal perspective although in practice most courses

will tend to include both. The clinical legal education approach is suitable as a method for use in part of the syllabus.

There should be a ready opportunity for non-law students to acquire legal education and special standards should be developed through a regulatory framework for that provision.

In order to establish credibility across the system of legal education it is necessary to have a regulatory framework through which a regulatory agency could work. The purpose would be to ensure that all stakeholders can have confidence in the content, standards and quality of legal education. This is linked to a system of accreditation. At this time it is not possible to identify a body within Georgia which currently has responsibility for this, therefore it would be necessary to establish an appropriate agency. This could draw upon the structures which are in place in England and Wales.

A Regulatory Agency (RA) could determine the:

1. content of a Qualifying Law Degree (QLD)
2. programme specification for each course
3. guidelines for academic practice
4. benchmark statement for law
5. qualifications framework to determine intended learning outcomes (ILOs) at different levels of study
6. minimum resources to support the necessary standard for a QLD
7. sanctions for non-compliance with the standards of the RA.

Accreditation

The Regulatory Agency could undertake a review of the content, quality and standards of QLD providers to ensure there is confidence in the provision and to ensure compliance. A regulatory assessment to ensure compliance could be undertaken every five years. This would result in one of three decisions:

- the reviewers are satisfied and have confidence in the provision
- the reviewers have limited confidence in the provision and would make requirements for improvements to be made
- the reviewers do not have confidence in the provision and appropriate sanctions would follow

The RA would monitor the continual development of positive policies and practices both to widen access and promote a pluralist learning culture. Assessment is a key aspect of staff development and on-going training would be offered to ensure staff engage in accordance with current practice and procedures relating to RA guidelines. This can be arranged in-house and through external bodies.

Regulatory provisions

The underlying approach to this process is to promote a shift from traditional Soviet methods of teaching law to the enhancement of a new order which is pluralist and recognises equality and diversity. The design of new law programmes provides a creative and innovative opportunity to enable law academics and professionals to work together. This would establish a culture of professional development and the sharing of theories, ideas and legal practice. It promotes the development of a wide network of lawyers and the dissemination of legal education. Whilst fostering and developing this culture, it is also necessary to maintain regulation and a system which ensures the integrity and effective management of new law programmes.

Whilst the Regulatory Agency would be the main body which monitors this process, it is also important that law schools generate a strong sense of ownership and academic freedom. It is acknowledged that the meaning of academic freedom within the new order is yet to emerge but the fundamental principle can be taken to mean the freedom to design the content and delivery of one's subject and the freedom to explore different perspectives in the pursuit of knowledge and intellectual development. It is acknowledged that whilst a transitional country may be seeking to establish such freedom there is a sense in which academic freedom has been attenuated in well-established universities.

The formal processes to approve and review academic programmes should foster creativity, and encourage a culture of continuous enhancement of legal education.

Formal and effective procedures should exist for:

- the approval of law programmes;
- the subsequent monitoring of their effectiveness in achieving stated aims and the success of students in achieving the intended learning outcomes;
- the review of the continuing validity of those aims and outcomes.

These guidelines provide arrangements for programme approval, monitoring and review for developing and reviewing their procedures.

Admission

In terms of the proposed Georgian model, admission procedures should be based upon principles which are fair, open, liberal, accessible and transparent creating equal opportunities for all. Law Schools would be able to design law programmes and Learning, Teaching and Assessment methodologies in accordance with the guidelines provided by the RA.

Continuing professional development

Georgia is seeking to create a link between the profession and education, so that professional organisations develop their own capacity to provide life-long education and maintain strong professional links with universities. Every lawyer should be obliged to update a practicing license and this should be regulated by law.

Implementation

In order to change the environment Georgia perceives the need to adapt to a system which will regulate all major issues concerning legal education and its regulation. In order to establish a sustainable law school it is necessary to ensure academic staff are suitably qualified both in terms of expertise and experience. At the outset it might be desirable to concentrate on a core group of law academics to focus on an intensive programme of professional development. For example 10 staff could be selected to attend a UK Law School to experience legal education at first hand. This might be arranged over a two year period to enable the academics to follow the conversion course for intending lawyers on a part-time basis. This would provide space for reflection and review of a system of legal education both in terms of learning the law and the learning, teaching and assessment methodologies associated with established law schools.

In order to promote this academic and professional development, law academics and professionals could be invited to join law UK associations e.g. the Society of Legal Scholars, the Association of Law Teachers. The UK Centre for Legal Education is a central resource which supports the interests of law educators and law schools. Contact could be made with any of these associations to enquire about a proposal to set up a link for academics and lawyers in Georgia.

Academic development could be provided to:

1. enable staff to appreciate the role and purpose of the Regulatory Agency
2. adopt a coherent approach to establishing law programmes
3. appreciate the purpose of quality assurance of academic standards
4. train in new methods of learning, teaching and assessment
5. appreciate different learning styles and effective ways of ensuring students engage with the programme of study
6. appreciate the need to write a programme specification and subject specifications to ensure coherence across the programme of study
7. understand the purpose of assessments and different forms of assessment
8. form course teams to establish and retain coherent practice

According to the programme designs and curricular content, it will be possible to establish requirements for staffing. There will need to be adequate numbers of both academic and administrative staff, technicians, IT support and learning support. If there are five hundred students in the Law School and an academic staff student ratio of 1 staff: 25 students it will be necessary to employ 20 full-time academic staff or a ratio of full-time and part-time staff. There will need to be administrative and technical support. Each member of academic staff should be suitably qualified in the area in which they are required to teach. This means being competent to teach the subject(s) as well as a commitment to staying up to date and developing a range of teaching skills. They must understand the reasons for developing a coherent law programme and working together as part of a team. These developments will require input from external facilitators who can introduce new methods of learning and teaching to demonstrate how it is possible to shift from traditional methods to a more diverse and pluralist approach.

It may be possible for staff to engage with a distance learning programme to obtain a qualification as a professional teacher at University level. Programme teams should be set up to discuss how the developments are taking place and to recommend action for

improvement. This would be an alternative to the traditional *cathedra*. Professional development seminars and workshops could be part of the Law School activities where academics and practitioners come together and share ideas to enhance the provision of legal education. It may be possible for short courses to be provided in the UK specifically to provide staff development for Georgian lawyers and academics.

There must be very close links between the University and law firms to create a system of legal education which grows as comprehensively as possible. This will be encouraged and implemented through the work-based learning part of the law degree. This part envisages that law students will spend vacation time in law firms to build awareness of the standards and expectations of legal practice. In addition, lawyers can be incorporated as Visiting Professors to give occasional lectures or practical exercises in drafting, legal research, problem-solving, client interviewing and advocacy. A mock court room could be set up at the Law School where moots and legal exercises can take place.

Law academics should be encouraged to research their subjects and produce sets of learning materials. There is extensive material available on the WWW which can provide guidelines for the production of such materials. In order to establish a way forward for law teachers and practitioners, a strategy for staff development would be desirable in establishing legal education reform. The main purpose is to enable lawyers, both academics and practitioners, to embrace a new order of legal education. This is based on the fundamental principle that there is a shift from the traditional towards a more diverse system. There would be a move from passive learning to interactive learning incorporating new techniques and styles of learning and teaching.

Conclusion

In summary, this is a time of great challenge for Georgia in its transition. The extent to which aspects of the UK system could be applied to Georgia is difficult to determine when establishing a new infrastructure in a transitional country. It is necessary to see how the new legal order is to be established when considering how law programmes are to be constructed yet that is outside the immediate parameters of this paper. There are matters of substantive and procedural law to establish. Once that picture becomes clear further work can be done to introduce a framework of legal education with more certainty. A further paper could examine existing legal provisions and explore opportunities for developing a fundamental theoretical basis upon which legitimacy could be established. It is hoped that further work can be done in this regard.