

TEACHING SOCIAL JUSTICE TO LAW STUDENTS THROUGH COMMUNITY SERVICE - THE SOUTH AFRICAN EXPERIENCE

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In this paper 'social justice' is regarded as referring to the fair distribution of health, housing, welfare, education and legal resources in society, including, where necessary, the distribution of such resources on an affirmative action basis to disadvantaged members of the community.¹ Social justice in this sense is concerned with satisfying the 'needs' rather than the 'wants' of society. Law students can play a valuable role in assisting indigent members of society to satisfy some of these needs by engaging in community service programmes.

Most law schools in South Africa give students very little academic credit for community service carried out as part of their legal studies, for example work in legal aid clinics or Street law programmes. Many university law faculties have had legal aid clinics since the 1970s and Street law programmes since the late 1980s. Both programmes involve community service by law students which deserve academic recognition.

A. Legal Aid Clinics

In this section it is intended to consider the following: (i) the definition of legal aid and law clinics; (ii) the background to legal aid clinics in South Africa; (iii) how legal aid clinics can be integrated into academic teaching; (iv) the community service component of legal aid clinic work; (v) how legal aid clinics can teach social justice.

1. Definition of a legal aid or law clinic

Legal aid clinics are offices staffed by law students under the supervision of qualified lawyers which provide free legal services to indigent members of the community (ie. they deal with live clients with real life legal problems). The term 'law clinic' is much broader in that it may include clinics that operate as legal aid clinics, but in some law schools, particularly in the United States, law clinics sometimes restrict their activities to simulated legal practice and do not deal with live clients. Even if they do deal with the latter they do not necessarily focus on poverty law problems.

In a developing country such as South Africa where there are vast economic and social

¹Cf AM Honore 'Social Justice' in R Summers (ed) Essays in Legal Philosophy (1968) 68; PN Bhagwati 'Human Rights as Evolved by the Jurisprudence of the Supreme Court of India' 1987 Commonwealth Legal Bulletin 236.

²DJ McQuoid-Mason 'The Organisation, Administration and Funding of Legal Aid Clinics in South Africa' (1986) 1 NULSR 189 193.

³Cf N Franklin 'The Clinical Movement in American Legal Education' (1987-9) 2 NULSR 55 64.

differences between rich and poor, and where the majority of the population do not have access to proper legal services, law clinics take the form of legal aid clinics and deal predominantly with poverty law matters. Thus legal aid clinics give students a valuable window into the world of poverty law and the real life problems of underprivileged members of society. In the context of the new South African Constitution which enshrines a number of social and economic rights work in a legal aid clinic sensitizes law students to both the theory and practice of social justice.

2. Background to Legal Aid Clinics in South Africa

At the time of the first international legal aid conference held in South Africa at the University of Natal, Durban in July 1973 there were only two university legal aid clinics in the country. These were at the University of the Witwatersrand run by staff and at the University of Cape Town run by students. The third clinic was set up at the University of Natal, Durban immediately after the conference, and thereafter there was a proliferation of legal aid clinics. By 1982 sixteen of the twenty one law schools in South Africa had clinics. In 1987 an Association of University Legal Aid Institutions was set up, and by 1988 the Attorneys' Fidelity Fund had been convinced of the educational value of legal aid clinics. Thus the latter agreed to fund, on an annual basis and provided funds were available, the salary of a director at those university clinics that were affiliated to the Association and had been accredited by the local law society in their area of operation.

Most of the clinics engaged in general practice, although some areas of law such as divorce, motor vehicle assurance (third party) claims and deceased estates (except for very small estates), were closed to them by the law societies. The vast majority of cases involved labour matters such as wrongful dismissals, unemployment insurance and workmen's compensation for injuries; consumer law problems such as credit agreements (hire-purchase), defective products, loan sharks and unscrupulous debt collection practices; housing problems such as fraudulent contracts, non-delivery and poor workmanship; customary law matters such as emancipation of women and succession rights; maintenance; and, criminal cases. During the struggle against Apartheid many of the clinics at the progressive universities were involved with civil rights cases involving pass laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights.

⁴See generally DJ McQuoid-Mason An Outline of Legal Aid in South Africa (1982) 139-163.

⁵Constitution of the Republic of South Africa Act 108 of 1996.

⁶Sections 26 (housing - within available resources), 27 (health care, food, water and social security - within available resources), 28 (children) and 29 (education).

⁷McQuoid-Mason Outline of Legal Aid op cit 139.

⁸The clinic was set up in the present writer's office on 1 August 1973 (McQuoid-Mason (1986) 1 NUSLR 191).

⁹McQuoid-Mason Outline of Legal Aid op cit 139-161.

¹⁰McQuoid-Mason (1986) 1 NUSLR op cit 197.

¹¹Generally for the types of cases handled by legal aid clinics see McQuoid-Mason Outline of Legal Aid op cit 139-161.

With the advent of democracy in South Africa in April 1994 the legal aid clinics are still dealing with poverty law problems, some of which such as housing, the quality of police services and social security have continued as a result of non-delivery by the new Government, partly due to inefficiencies and obstruction by bureaucrats employed by the old regime, many of whom retained their jobs as part of the political settlement. One or two clinics have moved from general practice to more specialised constitutional issues. Thus at the University of Natal, Durban, in addition to the ordinary Legal Aid course there is a specialist Clinical Law course which focusses on women and children, administrative justice and land restitution. However, the majority of clinics continue to engage in general practice and fewer restrictions have now been imposed by the law societies. Furthermore the latter also allow candidate attorneys to do their mandatory internships in accredited clinics. As yet law students do not have the right to appear in the lower courts on behalf of indigent litigants, although student practice rules have been in the pipeline since 1985. It is hoped that the new Government will introduce these in the near future.

Student activities in a legal aid clinic expose them on a regular basis to social justice issues in the new South Africa. Clinical work enables them to obtain a realistic insight into whether the Government is able to deliver on the ambitious list of socio-economic rights enshrined in the final Constitution.

3. Integrating Legal Aid Clinics into Academic Teaching

Apart from social justice aspects of courses in Jurisprudence most other law courses teach students how to operate in a first world commercial legal environment rather than a third world poverty law situation. This is understandable because students who have spent long years studying at university, sometimes after considerable personal and family sacrifice, expect to deal with clients who can compensate them adequately for their services. Work in a legal aid clinic together with the study of certain aspects of poverty law reminds students that

¹²Constitution of the Republic of South Africa Act 200 of 1993 s 236(2).

¹³The Attorneys Act 53 of 1979 s 2 (1A) (b) was amended by s 2 of Act 115 of 1993 to allow aspiring attorneys to 'perform community service approved by the society concerned' - provided that the person who engages them is practising the profession of attorney, inter alia, 'in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic' (s 3(1)(f)).

¹⁴The present writer drafted Student Practice Rules for South Africa based on the American Bar Association Model Rules for Student Practice (Council for Legal Education and Professional Responsibility State Rules Permitting the Student Practice of Law: Comparisons and Comments 2 ed (1973) 43) and submitted them to the Association of Law Societies of South Africa in April 1985 for onward transmission to the then Minister of Justice. Although the rules have been approved by all branches of the practising profession and the law schools they have been consistently and clandestinely blocked by beaurocrats in the Department of Justice. The new Minister of Justice, who took office in 1994, has given an undertaking to have the rules implemented.

there is whole other world of legal practice.

Legal aid clinic work has implications for the teaching of law because 'poverty law' is very often neglected in formal law curricula which tend to focus on 'rich peoples's law'. A successful legal aid clinic programme requires students to be trained in the relevant substantive law subjects which reflect the needs of legal aid clients. Students also need to have the necessary skills to service clients professionally and effectively under the supervision of a qualified member of staff. Some universities provide law students with both, but very few give students academic credit for the work done by them. The fact that a Legal Aid course is examinable like other courses means that it is not marginalised. At the same time it forces students to focus on practical aspects of social justice in at least one of their courses.

Universities such as the University of Natal, Durban have a formal Legal Aid course which covers relevant aspects of substantive law not dealt with in the ordinary syllabus such as practical aspects of legal aid and the right to counsel; prison law; children's rights; consumer protection; unemployment insurance; workmen's compensation; social pensions; land law and restitution; litigation against the police; access to children and maintenance; and, motor vehicle assurance (third party) law. These topics are presented at seminars by qualified lecturers in the field. The Legal Aid course also includes skills training in clinic procedures; interviewing techniques; small claims court procedures; interaction with other aid agencies; and alternative dispute resolution. Both aspects of the course are examinable. In addition students are graded on their performance in the clinic and a public welfare study report which they are required to submit in the second semester.

4. Community Service Component of Legal Aid Clinic Work

Legal aid students engage in community service in two areas of their legal aid work. The one is where they service clients in the clinic, and the other is when they compile their report on a public welfare agency. Both aspects of their field work count towards their final academic mark for the course.

Law students in the legal aid clinic are divided into firms under the leadership of a senior partner. The latter is responsible for ensuring that students report for duty on the days that they staff the clinic, and for the smooth running of the clinic. Each firm is allocated a supervisor who is a qualified lawyer or member of staff who is responsible for supervising the work of the students. No advice, letter, document or legal process leaves the clinic without being scrutinized by the relevant supervisor. Furthermore where it is necessary for legal processes to be signed or for a client's case to be taken to court, the matter will either be dealt with by the supervisor, (usually with the responsible student in attendance), or referred

¹⁵Cf CJR Dugard 'A Review of South African Legal Education' in Faculty of Law Legal Aid in South Africa (1974) 160 161.

¹⁶See Department of Procedural and Clinical Law, University of Natal, Durban Professional Training Manual (1996) 23-25.

¹⁷Ibid.

to a lawyer willing to take on clinic cases. As mentioned students are graded on their performance in the clinic.

Students are also required to visit a public welfare agency, usually during their vacation periods, in order to assist the clinic in building up a local and national data base of useful agencies. Students spend time at the agency and thereafter write a report in which they cover the biographical details of the organisation; an organogram and description of its structure; a short history; a description of its functions and objects; the nature of its work and a summary of two case studies based on files and interviews; the main obstacles to the work of the organisation and how it seeks to overcome them; and, the future aims and plans of the organisation. The public welfare agency research project is graded and counts towards the legal aid student's final mark. The completed projects are kept in the legal aid clinic for reference purposes. They give legal aid students a good indication of the types of organisations that are providing social justice to certain parts of the community.

5. How Legal Aid Clinics Teach Social Justice

Social justice in the sense of acknowledging the importance of certain aspects of a welfare state, and the need to give preferential treatment to disadvantaged members of society, has been given some recognition in the South African Constitution. Legal aid clinics which deal primarily with disadvantaged citizens become an important agent of reality for measuring the success or otherwise of the social and economic promises enshrined in the Constitution.

By working in a legal aid clinic law students obtain first-hand knowledge of how ordinary people are experiencing social justice in the new South Africa. They also have an opportunity to experience the difficulties involved in using legal rules to make social justice attainable to the person in the street. Sometimes they have the good fortune to assist clients successfully in enforcing the rights to which they are entitled. Thus there are two important aspects of student work in a legal aid clinic: (a) the opportunity to help disadvantaged and indigent members of society to obtain what is due to them, and (b) the theoretical and practical exposure they receive to the social justice issues of the day - something that is not possible in a regular black letter law course.

To achieve the above there is a need for properly integrated clinical law programmes which give academic recognition for the community service role played by law students. Such programmes can provide a valuable social justice learning experience for law students.

B. Street Law

In this section it is intended to consider the following: (i) the definition of Street law; (ii) the background to Street law in South Africa; (iii) how Street law can be integrated into academic teaching; (iv) the community service component of Street law; and (iv) how Street law can teach social justice.

¹⁸See above note 5.

1. Definition of Street Law

Street law is a programme designed to enable law students and others to make people aware of their legal rights and where to obtain assistance. Street law explains to men or women 'on the street' how the law affects them in their daily lives. For example, every time a person buys something, rents a house, gets married or divorced, or is the accused or victim of a crime, he or she comes into contact with the law. Street law helps people to understand how the law works and how it can protect them. It also explains what the law expects people to do in certain situations, what kinds of legal problems they should watch out for and how they can resolve such problems.

Street law not only makes people aware of how the present legal system can protect them, but also encourages them to think about the type of legal future they would like in the future. This was particularly important during the negotiations for the new Constitution in South Africa when there was wide spread consultation with the public concerning its contents. The programme encourages tolerance by making participants argue and experience opposing viewpoints. It also encourages the use of alternative dispute resolution such as mediation, arbitration and negotiation to discourage people from resorting to violence by taking the law into their own hands.

By enabling law students to go out to schools and communities to teach them about the law, the Street law programme gives students an insight into the legal needs and aspirations of ordinary people.

2. Background to Street Law in South Africa

Street law originated at the Georgetown University Law Centre in Washington DC in 1972. Law students were sent out to the inner city schools where many young people in the black ghetto areas felt oppressed by the legal system. It was brought to South Africa in 1985 and a pilot project set up at the University of Natal, Durban for six months during 1986. The latter was so successful that it was converted into a full-time programme at the University of Natal in 1987. Shortly thereafter similar programmes were established at the Universities of Pretoria and the Witwatersrand. Since then they have spread to 17 of the 21 law schools in

¹⁹DJ McQuoid-Mason 'Reducing Violence in South Africa through "Street Law" Education of Citizens' in Gerd Ferdinand Kirchhoff, Ester Kosovski and Hans Joachim Schneider (eds) International Debates of Victimology (1994) 347-348.

²⁰DJ McQuoid-Mason 'Popular Participation in Constitution-making: The South African Experience' unpublished paper presented at INTERWORLSA Conference on Democracy and Transition in Developing Countries with Particular Reference to Africa, New York, United States of America, 23-24 March 1996.

²¹McQuoid-Mason in International Debates of Victimology op cit 348.

²²McQuoid-Mason in International Debates of Victimology op cit 349-350.

South Africa. Initially the programmes were funded by the Association of Law Societies with money from the Attorneys' Fidelity Fund, but in recent years the United States Agency for International Development has been the main donor.

The core of the programme is the five Street law text books and teacher's manuals that go with them. The books are written in simple English for pupils in the last three years of high school and community-based organisations. They are reader-friendly with cartoons and numerous student-centred exercises which draw on the experiences of the participants. The books cover an Introduction to South African Law and the Legal System, Criminal Law and Juvenile Justice, Consumer Law, Family Law and Welfare and Housing Law. Subsequent books in the series followed the unfolding of political events in the country with an increasing emphasis on human rights and democracy training.

The Street law programme uses a wide variety of student-centred activities in its teaching methods. These include role plays, simulations, games, small group discussions, opinion polls, mock trials, debates, field trips and street theatre. At a national level it hosts an annual mock trial and human rights debating competition as well as a youth parliament. Participants are high school children involved in the Street law programme from all nine provinces in the country. The school children come from all walks of life and a special effort is made to include children from very disadvantaged families.

Law students are trained to teach interactively and to draw on the real life experiences of the communities when discussing the law. Thus they obtain first-hand knowledge about social justice issues in the schools and communities where they work.

3. How Street Law can be Integrated into Academic Teaching

The Street law programme requires participating law students to be properly trained so that they can go out to schools and community groups and teach effectively and confidently. Some universities have a dedicated optional course in Street law while others make it part of optional public interest law or capita selecta courses. Dedicated Street law courses tend to

²³DJ McQuoid-Mason Street Law Book 1: Introduction to South African Law and the Legal System (1987).

²⁴DJ McQuoid-Mason Street Law Book 2: Criminal Law and Juvenile Justice (1987).

²⁵DJ McQuoid-Mason Street Law Book 3: Consumer Law (1990).

²⁶DJ McQuoid-Mason Street Law Book 4: Family Law (1990).

²⁷DJ McQuoid-Mason Street Law Book 5: Welfare and Housing Law (1992).

²⁸David McQuoid-Mason, Edward L O'Brien Human Rights for All (1991).

²⁹David McQuoid-Mason, Mandla Mchunu, Karthy Govender, Edward L O'Brien and Mary Curd Larkin Democracy for All (1994).

³⁰See generally McQuoid-Mason in International Debates of Victimology op cit 353-353, and companion Teacher's Manuals for the different books.

³¹For example, the Universities of Natal, Pretoria, the North-West and Fort Hare.

³²For example, the University of the Witwatersrand.

focus more on the teaching methodologies than the legal content of the programme with much of the latter being left to the individual initiatives of the students. However, where Street law is part of a course such as public interest law there is often considerable emphasis on the substantive content of the course.

The University of Natal, Durban has a dedicated optional Street law course which includes regular seminars, an examination, the production of a mock trial package and community service by way of practical teaching in schools. Two seminars a week are held during which students are taken through lesson plans for a wide variety of teaching techniques and subjects from the Street law texts on introduction to law, criminal law, consumer law, family law, housing and welfare law, human rights and democracy. In addition they are taken step-by-step through the preparation and presentation of a mock trial involving up to 24 participants. They experience a mock trial for themselves as a class and are then required to compile and present their own.

The Street law students write an examination at the end of the first semester in which they are required to demonstrate an understanding of how the Street law programme works, to prepare two lesson plans of their choice from selected topics, and to prepare a list of questions and the opening and closing addresses for one side of a mock trial. Thus the examination tests the ability of students to teach law to lay people in an organised and effective manner by indicating how they would go about preparing themselves for the lessons they have to present during the programme. The Street law students are graded according to their performance in the examination, the compilation of their mock trial package and the manner in which they carry out their teaching duties at schools.

4. Community Service Component of Street Law

The community service component of Street law programmes involving law students varies at different universities. Some require school visits while others confine Street law teaching by students to community organisations and train school teachers to do the teaching in schools. As originally conceived, however, the idea was to send law students into high schools to teach about the law, and most dedicated Street law courses do this.

At the University of Natal, Durban Street law students in the LLB programme are required to teach at least 20 lessons in schools and to present their own mock trial at their schools. The academic and training part of the programme is done by a law teacher, while the school allocation and other logistical matters are handled by the local Street law office on the campus. Students are each allocated two schools, and the number of schools involved in the LLB programme is such that the students have to visit both schools a week. They have to obtain a report from the responsible school teacher at the end of the school programme and are graded on their performance in the classroom. The latter is done by way of an evaluation

³³For example, the University of the Orange Free State.

³⁴Department of Procedural and Clinical Law Professional Training Manual op cit 25D.

³⁵Ibid.

by both the pupils in the classroom and the school teacher. The school's community service component counts 25% of the final mark, and the mock trial package counts for a further 25%. A similar programme is run for undergraduate BProc students where Street law is part of the Legal Aid course. They are required to present 10 school lessons and a mock trial, but do not write an examination.

At present only a few of the 17 law schools involved in the Street law programme give academic credit for Street law work. Students in the programme deserve to be rewarded academically for the often long hours they devote to community service while teaching Street law.

5. How Street Law Teaches Social Justice

Street law students like legal aid clinic students obtain valuable insights into social justice issues in the communities they serve. Much of their teaching is experiential with the result that they draw on the experiences and needs of the communities when deciding which areas of the law to teach. Many of the lessons in the Street law texts are based on the social realities of the time and students are taught not to teach the law in a vacuum. They must be sensitive to the social justice demands of the communities concerned and relate these, where appropriate, to the provisions of the legal system and the new Constitution.

Law students benefit greatly through the experience of teaching communities about the law in its social context. They are also enriched when learning how some communities have managed to solve social justice issues and empower themselves without resorting to the law. Once again these are lessons which cannot be learned in a conventional substantive law school course. Students do not merely learn about the law as it is reflected in text books and law reports but gain first-hand knowledge as to how the law and legal institutions are working on the ground. In other words they learn about how the law affects the person on the street and not the person in the text book. This is a valuable lesson in legal realism because often the two are poles apart - particularly the law as it is applied to disadvantaged members of society. The latter is the acid test of social justice in any country.

C. Conclusion

Legal aid clinic and Street law programmes provide excellent mechanisms for the teaching of social justice. The latter, however, is best taught through a combination of academic theory and community experience and not from text books alone. Obviously there is an important role for the latter when setting out the theoretical framework for the concept of social justice, but it can only be made meaningful if it is considered within the context of the real world. It is particularly important in developing countries that law students be encouraged to participate in community service and be given academic credit for their efforts. A properly integrated academic and community service programme can provide legal aid clinic and Street law students with a wonderful opportunity to contextualise the concept of social justice while at the same time rendering a service to society.

³⁶Ibid.

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