TOWARDS PRODUCING A TRANSNATIONAL LAW GRADUATE: CHALLENGES FACING THE SOUTH AFRICAN LAW TEACHER

1. INTRODUCTION

South African law teachers of the 21st century face many and varied challenges. On the macro level higher education is being transformed and restructured in a fundamental way that will also affect academic disciplines. The legal profession itself is being transformed and a controversial new Legal Practice Act will probably see the light of day this year (2004) after an inordinately long and troubled gestation period. Six years after the introduction of the new four-year LLB programme, replacing the five-year programme which held its own for many decades, some are saying that it was a mistake and that it is producing sub-standard graduates. And, of course, the ever-present challenge of delivering a graduate (a product?) that will be the kind of lawyer that contemporary society needs. Without a doubt, our present-day knowledge and information society that spans the globe, needs lawyers who can appreciate the similarities and diversity prevailing in their world.

This paper briefly examines two of the challenges law teachers face in order to produce graduates who will be attuned to the kind of society they will find themselves in: (1) curriculum design and development and (2) creating a learning environment conducive to fostering "transnationalism".

2. THE CURRICULUM

The issue of curriculum design and development is about the designers asking the right questions, which in turn will lead them to the right answers. For example, what is the true purpose of a first qualification in law like the LLB degree? What is the purpose of having a core curriculum of compulsory courses or modules? Which subjects should form part of the core and why? Should universities deliver graduates who are professionals who will almost immediately be able to litigate with confidence in court? Where should the emphasis lie – on acquiring knowledge or on acquiring skills? For what purpose would electives be included in a first law degree? How many electives should be provided for? What is the ideal duration of the LLB degree? *Etc, etc.*

This is not the place or the time to debate all the principles that should inform the design of a whole new law curriculum. But from the perspective of ensuring that law graduates are adequately prepared for the challenges of an internationalised world of work, the question may be asked what kind of course content needs to be integrated into the law curriculum in order to achieve this desired result? And further, should this subject-matter be included as part of the core, or only be available as elective options? Another question may even be whether basic transnationalism should at all be an outcome of the first law degree; would it not be (better) achievable through specialisation on a masters level via a coursework programme?

As far as course content is concerned I am of the view that, as a minimum, the subjects Public International Law, Private International Law and Comparative Law would be essential foundation courses around which a transnational focus may be developed. I am also of the opinion that these subjects must be regarded as part of the core of a first law degree. It is a fact that only a very small percentage of South African law graduates enrol for a masters degree; if internationalisation is only promoted at postgraduate level, it would not have any significant impact on the profession. It would only deliver a handful of specialist professionals, which would of course in itself satisfy a specific need, but would never be able to fulfil the total need. One should realise that a further scenario where “foreign” elements are part and parcel of most legal disputes, will not be the exception, but the rule. All practitioners, and therefore all law graduates, must be equipped to deal with the international aspects of all branches of the law.

I would also venture to state that the subjects International Business and Trade Law (including aspects of International Taxation) and IT (Information Technology) Law should be part of the core curriculum. Some would certainly argue that these could at most be electives, especially in the South African context of a first law degree which has to fit into only four years. My response to that would be that we would be doing students a great disservice to deprive them of exposure to that field of law. It is simply unthinkable that law schools could in this day and age still produce law graduates who do not have a basic understanding of the legal ramifications of using the internet. The commercial work in law firms nowadays inevitably includes many cross-border transactions and being familiar with legal aspects of international business and trade has become essential.

The view that the current generally accepted core of the LLB curriculum does not leave room for adding any additional subjects, is based on the erroneous premise that the core is fixed and can never change. The truth is that if university legal education wishes to deliver graduates who will be able to function optimally as legal professionals, the curriculum should be adjusted from time to time. The core is not per definition sacrosanct and every component thereof should during a periodic review process establish anew its entitlement to be regarded as core. This may lead to traditional core subjects being either retained or reduced and merged with another core subject, or simply relegated to the category of electives to create space for a newcomer core subject.

It must be pointed out that the deleting and adding of courses are not the only ways of making adjustments to a curriculum. Apart from having a stand-alone course on Comparative Law, the comparative method of teaching can be employed to integrate "international elements" into courses on South African law. However, this is easier said than done. The continuous development of South African law via statute and case law leads to growth in the volume of the local law and there will therefore always be a tendency to limit (or even exclude) references to the law of other jurisdictions.

Another way of adjusting the curriculum would be to "manage" the electives. In stead of having just a single list of electives from which a fixed number should be selected, one could group electives together in a way that on the one hand limits the student's choice, but on the other hand also ensures that a minimum exposure to international law is attained. For example, the elective section of the curriculum could be designed to look as follows:

> "Candidates must select FOUR electives from the list below:
>
> (i) IT Law <u>OR</u> International Business Law.
>
> (ii) International Human Rights <u>OR</u> International Humanitarian Law.
>
> (iii) International Criminal Law <u>OR</u> Comparative Criminal Justice.
>
> (iv) International and Comparative Labour Law <u>OR</u> International and Comparative Property Law."

Closely related to the issue of the curriculum is, on the one hand, the matter of syllabi, and on the other hand, the teaching-learning methodology employed by lecturers. These can be topics for separate papers, but suffice to say here that the title or name of a subject is an empty shell which needs to be filled by a meaningful syllabus. Often the only adjustments that need to be made after a review process, is to amend the syllabi, leaving the curriculum intact. Again, even though what is taught or learnt may appear to be relevant and supporting an international focus, how that content or knowledge is transferred from lecturer to student is crucially important and may either defeat or support the attainment of the objective. The comparative method referred to above is an important tool in this regard.

A last issue which may be briefly referred to is the question whether internationalising the curriculum would mean that the current four-year undergraduate programme would have to be extended by one year. The answer would in my view be: no, not by itself. There may of course be other considerations why a return to a five-year programme may be preferred, and internationalising the curriculum could then weigh in as one of several supporting considerations.

3. LEARNING ENVIRONMENT

Creating an appropriate learning environment always contributes to the achievement of the educational goal which it aims to support. In this context it is in my view essential that South African law students be exposed to and have personal interaction with students from other jurisdictions and legal cultures. Student (and lecturer) exchange programmes are therefore vitally important. However, financial constraints often prove to be a significant barrier for many, and exchange programmes for all the benefit it accrues to the participants, can only serve a selected few. As an alternative we should strive to attract more and more international students to our local campuses. If sufficient numbers of students from universities of other jurisdictions could be accommodated in our faculties, the resultant interaction, both structured and informal, would serve to strongly support the goal of transnationalisation. First-hand experience of the differences and similarities between different legal systems will serve to convince students of the importance to obtain a better basic understanding of other legal cultures and systems.

To create a meaningful international environment, it is important that the sojourn of international students on the local campus is not too brief. The ideal minimum would be a period of one year, with a semester (five months) being an absolute minimum. This would in turn require us to offer courses which would be attractive to international students, especially courses with which they could earn credits at their own law schools.

A further obvious aspect of creating the right (international) learning environment is that the international student corps should be as diverse as possible. Receiving for example only students from neighbouring African countries would not contribute sufficiently to achieving this goal. Our students, and especially those from previously disadvantaged communities, need to be exposed to students of all cultures – Western, Eastern, Asian, *etc*. Ongoing and expanding liaison with and marketing through International Offices of selected universities from other jurisdictions would therefore be very important. Experience thus far has proved that this goal is eminently achievable.

But not only should our students be exposed to the thoughts and way of life of their fellow students from abroad; the law teachers themselves should also be. Attendance of international conferences and invitations to be visiting lecturers or researchers at institutions abroad are well-known avenues through which international exposure is obtained. But it is often relatively few individuals who participate in these exchanges. More staff should become part of these exchanges, not necessarily in terms of formal agreements between institutions, which would also require creative new ways of sourcing the funding to support these ventures.

4. **CONCLUSION**

A global approach to legal education cannot be considered a nice-to-have anymore; the world we live in demands that we be responsive to changes in our external environment. The signs are there for us to note and interpret. We owe it to our students, and the community, to take up the challenge.