

The Role of Law Schools and Law School Leadership in a Changing World

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Topic 1: The Goals and Objectives of Law Schools in Their Primary Role of Educating Students

In this brief note I will restrict myself, in the first place, to what I believe should be the educational goals and objectives of my law faculty, the Law Faculty of the University of Cape Town (henceforth, abbreviated as UCT). Some of what I have to say about these goals and objectives applies also to other law faculties in South Africa. Some of it may apply also to law schools in other parts of the world. However, given that the context wherein a law school or faculty operates differs from country to country, and even within countries, I do not assume that my views have universal, or even in all respects national, application.

In this note I will restrict myself, in the second place, to what I believe should be the educational goals and objectives of the UCT Law Faculty's LLB programme. The Faculty also has an LLM programme, and has a number of students registered for PhDs. However, it is the LLB degree that gives access to the legal profession. Again, some of what I have to say about the goals and objectives of the UCT Law Faculty's LLB programme may also apply to its LLM and PhD programmes, but I do not assume that to be the case.

In my view (and this is my view rather than that of my entire Faculty), the primary educational aim of the UCT Law Faculty's LLB programme should be to provide our graduates with the fundamental knowledge and skills that they will require to become leading practitioners of South African law.

Why the emphasis on the *practice* of South African law? Because that is where the overwhelming majority of our LLB graduates end up. South Africa, like England, has a split profession, except that we speak of advocates and attorneys, rather than barristers and solicitors. Most South African attorneys work alone or in two- or three-person partnerships. However, there have always been a number of large law firms, specialising in commercial work, and centred in Johannesburg and Cape Town. Recently, most of these have merged into super-large firms. A survey of our recent LLB graduates shows that a majority of them joined one of these (now) super-large firms. Our register of alumni shows that a majority of our LLB graduates remain there. What about the rest of our LLB graduates? Many are practising as advocates (mainly at the Cape Bar). Some have become judges. A few have become prosecutors in the National Prosecuting Authority. A few have become legal

academics. And a small number have moved into the business world (though I have only anecdotal evidence for this, it appears that this move is generally made from a law firm).

Why should we wish our LLB graduates to become *leading* practitioners of South African law, rather than merely good or competent ones? Because UCT is by several criteria the best university, and its law faculty one of the best law faculties, in South Africa (thus, for example, UCT placed 179th in the Times Higher Education World University Rankings in 2008, the only South African university to make it into the top 300). And because – partly as a consequence of that – we have among the best LLB students in the country.

Why the emphasis on *fundamental* knowledge and skills? Because a legal practitioner's legal education does not come to a halt the moment he or she completes his or her LLB degree. It continues throughout his or her entire career. In South Africa it does so, formally, during an aspiring advocate's year of pupillage and an aspiring attorney's two years of articles. It does so, informally, as an advocate or attorney gains experience over the years, often in highly-specialised and fast-changing areas of practice. Given that the LLB degree constitutes only the first three or four years of a practitioner's continuing legal education, it should, on the one hand, lay the basis for what is to come and, on the other, focus on those bodies of knowledge and kinds of skills that are better taught 'in the abstract' in law faculties by law professors, than learned 'on the job' in chambers and law firms.

What *knowledge*, then, is fundamental to a legal education? Clearly, knowledge of the basic rules and principles of the law of property, the law of contract, the law of delict (torts), criminal law, and constitutional law. Most leading South African legal practitioners, it would appear, would agree with this. The UCT Law Faculty is in the process of reviewing its LLB curriculum. As a first step in that process, a questionnaire was sent to 25 judges, 60 advocates (most of them senior counsel) and more than a 100 attorneys (mostly at large or super-large law firms), asking them, in effect, to tell the Faculty which law courses they thought essential to the LLB degree. One of the questions required the respondent to identify which five courses he or she thought should be compulsory in the LLB degree, if only five were. Most respondents identified the five courses identified above (though some preferred the law of persons to the law of property, and some company law to criminal law).

But this is not the only knowledge that is fundamental to a legal education. As every thinking lawyer knows, the law often 'runs out' or is indeterminate. Even when it does not run out, it can at times be changed: by parliamentary legislation or by judicial over-ruling, distinguishing, or interpretation. As every thinking lawyer also knows, when the law runs out, adjudication involves evaluative reasoning. Decisions about how to change the law are similarly evaluative in nature. The fundamental knowledge required to become a leading legal practitioner thus cannot be restricted to knowledge of the rules

and principles of property, contract, delict, criminal and constitutional law (and, if one wishes to expand the list, persons and companies). It must include an understanding of the relationship between law and values (morality or justice, if you like), and the role of the latter in adjudication and law-making. Again, many South African legal practitioners appear to be in agreement with this. Another question in the described questionnaire required the respondent to identify *all* the courses he or she thought should be compulsory in the LLB degree. A majority of practitioners (be they judges, advocates or attorneys), included jurisprudence. One of the central concerns of jurisprudence, certainly as it has been taught at the UCT Law Faculty for many years, is the relationship between law and morality.

Does it follow, from the fact that adjudication and law-making are value-based in the way described, that the UCT Law Faculty should seek to instil a particular set of values in our LLB graduates (some such values were suggested by the possible questions posed in relation to topic 1: respect for the rule of law and the independence of the judiciary, a commitment to social justice)? Yes and no. No, because it is not a law school or faculty's task (no more than it is a drama school or science faculty's task) to make its graduates morally virtuous. Yes, because – given the role of morality in adjudication and law-making – it is perfectly legitimate for a law school or faculty to explain the nature of moral virtue to its students, and because most people, once they fully grasp the nature of moral virtue, will choose to lead a morally virtuous life.

In other words, the UCT Law Faculty may and should explain to its LLB students the value of the rule of law and of an independent judiciary. It may and should explain what justice is and why it matters, particularly in adjudication and law-making. Having received and comprehended that explanation, most of our LLB students (provided that the explanations are good ones) will then respect the rule of law, will cherish the independence of the judiciary, and will seek to act justly rather than unjustly in their professional lives. However, the Faculty's goal or objective in educating its LLB students about the values underpinning and intersecting with the law should only be the former, namely to explain those values, and not the latter, namely to instil them. Thus (to make this a little more concrete) while the Faculty could make it a condition for a student to obtain the LLB degree that he or she understand the right to equality in the South African Bill of Rights and its possible moral underpinnings, it cannot make it a condition for the student to get the degree that he or she accept that right as morally justified.

Finally, what about *skills*? Here it is important to recognise that skill in many activities is best acquired by actually performing that activity (think of driving a car or hitting a ball) and that some activities which are performed daily in legal practice cannot be performed at all, or only with great difficulty or artificiality, in a law school or law faculty. Before a law school or faculty makes it its aim to teach a particular skill to its students, there are thus two

thresholds that must be crossed. First, the skill must be an important or fundamental one. Secondly, it must be a skill that is suitably taught in the law school or faculty rather than learned in the law firm or at the bar. Certain skills easily cross both these thresholds, such as the ability to analyse a judgment, to write an argument (making proper use of legal authority), to find the law on an obscure point, and so on. It is less clear, however, that the law school or faculty is the place to teach advocacy or negotiation skills, or how to work in a team.