

The goals and objectives of Law Schools beyond educating students: Research, Capacity Building and Community Service.

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Law Schools generally are aligned to the mission statements of the universities of which they form part. This also holds for the Faculty of Law at Stellenbosch which is thereby required to serve the entire South African society in the field of law through research, teaching and community interaction activities. From this point of departure the Faculty has committed itself not only to produce lawyers of the highest quality for the legal profession and broader society but also to responsibilities going beyond this primary educational function. These are

- to develop the highest quality of jurisprudence through legal research and to shift the boundaries of knowledge;
- to help promote access to the law in interaction with the community and to help build a better society;
- to instill the ideal of justice in the students and to equip them with the highest ethical values;
- to defend and help promote a democratic value system and the constitutional state;
- to apply capacity and expertise for development in Africa (particularly in the regional context);
- to act actively in the promotion of the diversity of people and ideas in so far as composition and activities are concerned; and

From a historical perspective there is certainly a moral imperative for South African law schools to address the societal implications of legal doctrine and the legal system to ensure that research is socially relevant and that teaching inculcates a sense of social responsibility in students. It is arguable that the imperative goes beyond a merely moral responsibility. The so-called postamble to the Interim Constitution of 1993 stated that it “provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex” (cf *Holomisa v Khumalo* 2002 3 SA 38 (T) at 55). This image expresses a continued belief in the capacity of law and the legal system to achieve a fundamental transformation of society, albeit in the opposite direction to that adopted under Apartheid and in order to redress its inequitable consequences. To this end the Bill of Rights of the final Constitution of 1996 entrenches a set of fundamental rights - both the traditional rights of the individual as well as so-called socio-economic rights - not merely as a corrective to abuses of state power, but also to serve as a template for the transformation of society. The agendas of South African Law Schools regarding research and community service initiatives, it is submitted, cannot but be informed by this overriding constitutional injunction.

Although the functions of research and utilizing the faculty's knowledge base to play a constructive role in community affairs are regarded as independent and indeed self-evident responsibilities of any university faculty, it is important to recognize and strive to realize the interrelatedness of these functions. Research not infrequently plays an important role in judicial decision-making and law reform, but is also intimately related to the quality of teaching in so far as students are in fact entitled to exposure to cutting edge theoretical insights. From this perspective the divide between teaching and research is artificial and one that ought not to be overstated. Service to the community also, can of course only proceed from a faculty's strengths in the areas of research and teaching. The ideal, therefore, is of an integration of the faculties activities regarding the three core processes of any university (teaching, research and community interaction).

An example of such an integrative endeavour is provided by a collaborative project on *Combating Poverty, Homelessness and Socio-Economic Vulnerability under the Constitutional Dispensation* launched by the Stellenbosch Law Faculty in 2009 with funding from several sources, including a substantial grant from the university itself as part of an overall institutional strategic Plan. The project will bring together the research efforts of several members of the Law Faculty and the community outreach efforts of the Legal Aid Clinic to energize and accelerate the Law Faculty's work in this important area of the law.

The project takes as its premise that the legal system and processes inherent in it are important for the transformation of South African society and overcoming the legacy of pathological social circumstances such as poverty and inequality, inherited from Apartheid, as well as to consolidate and deepen the democratic order. Dire poverty and inequality and systemic deprivation as a result also of the HIV/AIDS pandemic have the result that a significant part of the South African population are still denied full participation in the economic order and suffer an impairment of human dignity.

To the extent that traditional legal institutions and doctrines entrench inequality, the existing legal order remains a stumbling block in the way of the realization of transformational goals of the constitution to be addressed research and law reform. At the same time, the legal system also holds the promise of serving as an important instrument of transformation and redress. Of central importance in this regard is the Bill of Fundamental Rights entrenched in the Constitution of 1996. Apart from rights to equality and human dignity, property and land, the Constitution also recognizes a range of socio-economic rights (access to housing, health care, food and water, social security and education) as well as a right to administrative justice. These rights are justiciable and the extent to which their enforcement by the courts can, as a result of the so-called horizontal application of many fundamental rights, serve to further the transformational aims of the constitution also by correcting traditional doctrines of the common law, raise fundamental questions and challenges for legal research in a number of areas. The Fundamental rights and the developing jurisprudence in this regard also provide a normative framework for the governance of the country having an impact on socio-economic policy, legislation at local, provincial and national levels. Members of the Law Faculty will be

enabled to intensify their research on topics impacting upon poverty and inequality. Research initiatives will examine various facets of the question: how can the 1996 Constitution, with its justiciable Bill of Rights, be used to roll back historical trends of social and economic marginalization? The research will extend not only into questions of constitutional interpretation, but also into implications for law-making and policy-making across a broad spectrum of notions relating to property, land use and the problem of poverty, land reform, security of tenure and housing, the development of socio-economic rights as legal concepts, the notion of administrative justice as a controlling mechanism for the delivery of social services and the evaluation and refinement of affirmative action, black economic empowerment measures as instruments of redress, constitutional interpretation and the deepening and consolidation of democratic values.

The project has a strong training focus. It will enable the Law Faculty to recruit and fund a substantial number of new full-time postgraduate students to write masters and doctoral theses within the broad area of law and poverty. Plans are in place to provide intensive training and advisory support to such students, both to assist them in succeeding in their academic programmes and to equip them to become catalysts for social transformation as they enter the work force. The interdepartmental nature of the research project and integration of efforts are expected to impact on the number and quality of outputs, heightened activity workshops and contacts. Thematic workshops, conferences, and lectures throughout the year will help to integrate individual participants' research efforts into a collaborative whole that is greater than the sum of its parts.

An innovative aspect of the project is the integration into it of the Legal Aid Clinic, the Faculty's primary instrument for community service. The project will augment the Clinic's efforts to reduce marginalization by ensuring access to legal services for disadvantaged communities. Apart from a direct contribution to the combating of problems of poverty and socio-economic marginalization through work on land evictions – an important issue in the farming community – debt counseling, access to social pension and grants and family violence, it is also envisaged that the Clinic will serve as a laboratory for empiric research regarding the issue of land reform in particular. The Clinic is also well-placed to identify and litigate potential test cases relating to constitutional rights, which can in turn help to set rights-enhancing precedents for the benefit of other similarly marginalized communities. In so doing, it could serve as a vehicle to enhance the contributions already being made by some faculty members to high level constitutional litigation in the area of socio-economic rights. The Clinic also has as a primary responsibility the inculcation of clinical skills in undergraduate students. By means of a sharper focus on thematic issues of broader social relevance, and an extension of the number of students acting as consultants in the clinic, the delivery of students with a heightened sense of social responsibility and a commitment to public interest lawyering will be enhanced.

Apart from reservations regarding the predilection for the instrumental use of law and the legal system to engineer or structure societal relations, an integrative approach poses the challenge to a law school not to neglect strengths in areas not as directly related to the socio-economic reformist agenda as others in so far as staffing, research funding and provision for post-

graduate students are concerned. It is also important not to deprive students of choice and to bind them into a paradigm of lawyering that may be as restrictive as that of the traditionally obtaining model of a high level commercial practitioner. An integrative model of the kind postulated here ought also not to curtail roleplaying by individual faculty members in relation to service to governmental or other institutions, law reform bodies and as contributors to debates on issues of public importance. Although a tradition of academic activism prevalent during the struggle against Apartheid has to some extent diminished, the need for legal academics to remain active as public intellectuals remains undiminished. The adoption of partisan positions by members of faculty can be problematic from an institutional point of view, the integrity of an institution can in the main be safeguarded by a rule of thumb that faculty members should speak out in their personal capacities and by restricting collective institutional interventions to issues of truly national significance or channeling such initiatives to national bodies, for example the Association of Law Deans or the Law Teachers Society.