

**Pedagogical Reflections:  
What are the Issues, Challenges and Opportunities in Law School Teaching?**

By:  
Amy S. Tsanga  
University of Zimbabwe: Faculty of Law, Zimbabwe

**I. Why student centred pedagogy?**

The issue of law schools and pedagogy is one that has often received attention from the beneficiaries of the products of law school training, especially from the perspective of raising concerns of perceived gaps between theory and practice. Pedagogical approaches in law schools would receive much more focus from legal academics across the board, if we paid much more attention to the contextual realities and settings that students will utilise their gains from law school. Whilst most law teachers are indeed worthy experts in their field, (even if this is from our own internal perspectives as judges), it is also fairly trite that subject matter expertise does not of itself translate to good teaching skills. Yet good teaching skills, that seek to give effect to the content of what we teach, are critical to the production of lawyers who are alive to the challenges that they will inevitably confront and have to address in the real world.

There are not many instances where students pursue knowledge for its own sake. In most cases, their pursuit of knowledge is linked to interest in that field but also to career opportunities. In the case of those pursuing post graduate studies, the desire is often to enhance expertise in a chosen field – again from the point of view of “anticipated use” for most of them. It is therefore safe to suggest that “use” and “context” rank high on any student’s agenda.

I recall from my own post graduate student days an incident where a fellow student who had been practising as a criminal lawyer before deciding to pursue post graduate studies, took great umbrage as a self paying student, at a professor teaching a certain law subject, when after two or so weeks on the masters programme, she could identify neither head nor tail of his complex theories, especially from the perspective of the real world lawyering context that she was coming from. Assurances that all would be “revealed” with the fullness of time brought little comfort. On reflecting on this experience now as a law teacher myself, I recognise that the issue that needed attention was not so much the complexity of the theoretical terrain but the lack of attention that was being paid to pedagogical skills to traverse those complex terrains. Centrally, there were two issues that were lacking on the law professor’s part: creativity and technique in transmitting information. Teaching and learning interaction involves more than subject matter expertise, if our concern is to deliver meaningful law school experiences for our students. Creativity is essential as is making the subject matter interesting. Technical and interpersonal skills are also vital. As such, an awareness of a range of methods for effective teaching is vital.

As law teachers, it should of course trouble us greatly that much of what we produce is perceived as unusable by those in the legal profession. How can we ensure that content and teaching methods strike the needed balance between theory and practice? Are there effective teaching methods that we as law teachers have perhaps been neglecting in the class room that could enhance the task of imbuing students with knowledge, skills and the correct attitude towards lawyering especially from a social justice perspective? I address some of these issues below in terms of challenges and opportunities.

## **II. Stepping outside the mould in terms of law teaching; opportunities and challenges**

I would like to argue that resources aside in terms of what is available in different settings, one of the greatest obstacles to law teachers embracing a diverse range of teaching methodologies beyond some of the well known methods used in law schools such as questioning and discussion, the Socratic method or traditional clinical programmes, stems from the fear of breaking with orthodoxy in terms of what constitutes teaching of law. The desire to conform and indeed in some cases the equally debilitating fear of embracing modern class room technologies are both at the centre of the problem, but perhaps the former more so than the latter. There are indeed many among our ranks as law teachers who equate complexity and being little understood not just in our writings but in the classroom with brilliance. Communicative teaching methods that simplify understanding may not be deemed scholarly. As such embracing teaching techniques that could unveil the mask may not be in the interests of the esteemed “scholar”.

Let me give an example from a fairly recent experience as co-editor of a book on teaching, researching and analysing women and law, of what I mean about this unease with simplicity among teachers of law. The book’s layout and design editor, who had been invited to a colloquium where all the teachers involved in the masters’ programme in question were present, suggested that a book on teaching methods should walk its talk in terms of its outlook. In essence, it meant having a book that is easy to read: that contains activities, exercises, demonstrations that inform the teaching and learning experience; and, a book that uses visual imagery such as photographs as well as catchy “blurbs” drawn from content and classroom experience. It also meant more openness in sharing experiences of what has informed our teaching in any subject matter. She had brought an illustrative chapter using one of the chapters in the book to illustrate what the book as a whole might look like if we went with the suggested layout and design. For some, the horror of departing with orthodoxy in terms of what an academic book should look like was palpable! The proposed outlook and design seemed to smack too much of elementarism. Pictures, boxes, designs, blurbs! Now who would treat any material ensconced in such as serious academic legal material? Perhaps those who had kept women away from the academy all those years had a point after all! As for disclosing what has moulded our perspectives and approach as law teachers, whose business was it anyway? She could easily have suggested death by firing squad and for some, in that moment, that would have been a far more honourable death than one stemming from loss of reputation among one’s legal peers! But in the end persuasion won the day, compromises were made centred on not too much this, not too much that; not too many pictures; not too many blurbs! Perhaps more importantly, the authors agreed to be true to the book’s objectives in telling their teaching experiences, unhindered by real or imagined gate keepers.<sup>1</sup>

## **III. Enriching our methods: What are the options?**

A variety of instructional methods are available to any law teacher who is keen to break the traditional mould in terms of how law is taught. In this regard I would argue that as law teachers, our selection of methods, which I will discuss briefly, must of necessity be influenced fundamentally by the aims and objectives that shape any given law school’s curriculum. For most law schools, these generally centre on i) imparting doctrinal knowledge, ii) enhancing skills development among law students and iii) fostering desirable attitudes in the lawyer, the most important perhaps being the issue of the ethics. Since knowledge attitudes and skills are learnt by different processes, our selection must stem from an understanding of which methods are best suited for achieving each of these objectives.

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<sup>1</sup> I will speak briefly about the book **Women and Law: Innovative Regional Approaches to Teaching, Researching and Analysing** (Tsanga A and Stewart J Eds) (Weaver press) 2011

As regards knowledge, one of the criticisms that have been levelled against law schools by those practising law, is that law schools are somewhat deficient or are becoming even more deficient in teaching legal doctrine i.e. the knowledge of law. At the core of the concern is the rapidity with which law schools are seen as having become a place for abstract theorising about the law and the pursuance of distracting interdisciplinarity, than an environment where law students are imbued first and foremost with a mastery of legal doctrines in a range of critical fields.<sup>2</sup>

As regards doctrinal knowledge the expectation is that law students should leave the law school well able to appreciate and describe not just the content of doctrines in a given subject, but also with the ability to critically analyse the laws' strengths and weaknesses in that field and to have a critical appreciation of the aspects that may need reform.

Given the above concerns, the issue is what methods are presently dominant in the law school for the achievement of knowledge objectives such as the teaching of legal doctrine? What others could be embraced? In any given law field, the law's strengths or weaknesses is unlikely to emerge without an understanding of its content and how it has been applied in practice as well as its effect on real people. It is for this reason using the case law has played and continues to play a key role in the teaching legal doctrines.

In some countries, law may be taught in the official language which may be a received or imposed language from colonial days. Learning the complexities of the received legal system in a language which is not the mother tongue, calls for the use of effective pedagogical skills that bridge such challenges.<sup>3</sup> It is in this regard that the teaching technique of explanation and discussion through use of suitable examples remains key. Descriptions and explanations may also continue to be important in resource challenged settings where access to materials may be a problem. But even in such cases, there is far more room for innovative approaches such as working on selected concepts in small group discussions, use of power point to zero in on core concepts, hands on activities to unpack complex concepts, debates, role plays. Generally, the use of methods which are participatory and are better able to aid the student's development of knowledge and analytical abilities, are what is at stake.

Pluralist legal settings where the official law is only one of the variables among a range of competing norms that a student will encounter also mean that the law teacher has to teach in a manner that will best enable students to appreciate such realities. Pedagogical challenges require the law teacher in such an environment to get his or her students to be able to understand various aspects and different perspectives in working with laws. If knowledge is indeed best learnt by discovering solutions to problems then one could argue that best way of exposing students to the challenges of lawyering in contexts of legal pluralism is to combine class room experiences with grounded research experiences in the real world. This kind of realism in the teaching of law can enable law students to appreciate more fully the social and political context which they find themselves upon leaving law schools. With mini research projects incorporated as part of the teaching and learning process, students not only appreciate the contents of law but also learn to address the underlying assumptions and values that influence such laws.

Yet another significant aspect that can influence our selection of teaching methodologies in preparing students for real world lawyering is the fact that regardless of the nature of the subject matter, law operates in contexts that are highly gendered, riddled with class differences, as well as racial or ethnic inequalities. Given such contextual realities, the challenge is not just the content of what we teach but how we teach, that aids the appreciation of these complexities. Key to this is the

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<sup>2</sup> See for example the critical analysis by Harry T Edwards **The Growing Disjunction Between Legal Education And The Legal Profession** 91 *Michigan Law Review* 34 1992-1993 pp 35-78

<sup>3</sup> See for example CRM Dlamini **The Law Teacher, the Law Student and Legal Education in South Africa** 109 *South Africa Law Journal* 1992 pp 595- 610

role of the law teacher in fostering new attitudes towards law that are basically learnt by reflecting on concrete experiences. In this regard law teachers can learn a lot from feminist teachers who have sought to utilise women's lived experiences with the law to illustrate more effectively strengths, weaknesses and opportunities for reform in specific legal fields.<sup>4</sup> In particular, the teaching of person directed legal courses like refugee law, immigration law, women's law, to mention a few, of necessity call for drawing on the specific experiences of such groups in teaching the law. The provision of legal assistance for example within some law schools is often a valuable source from which to draw people's experiences with the law.

Given that skills are generally learnt through observation and practice, most law schools have generally put emphasis on clinical programmes as a way of developing lawyering skills. In addition, skills in legal writing, legal research and analysis, are also regarded as fundamental for law students.<sup>5</sup> While these two categories of skills development have received attention in some law schools, I would like to argue that teaching skills in empirical research also stands to equip the law student to address some of the core challenges that they will address in the real world.

Grounded research can help law students to better appreciate the application of the law at both the local and global level. Results of empirical research stand to play a crucial role in lobbying for law reform in critical areas. The role of lawyers in many international agencies also means that research and analysis is a critical area of skills for law students to have. A lawyer with good empirical research skills stands to contribute much for the development of law by highlighting those areas that need to be reformed. Those working in the field of women and law for example have indeed found that empirical research has played a very significant role as a foundation for lobbying the legislature to put in place law reforms that address specific areas of concern.<sup>6</sup> I would argue that the best way to teach skills in empirical research is by actually getting students to carry out empirical research on selected issues.

I would also like to comment on the use of visual media such as documentaries that have legal relevance as they have such a potential to bring out interlocking aspects in understanding the law, in a way that many other methods are not able to do. The use of this method as a teaching tool has also brought to the fore, the need for the law teacher who uses them to have additional human skills that have otherwise been neglected. Let me illustrate this point by way of an example.

Keen to link theory to practice, and a firm believer in embracing a variety of teaching approaches, I recently had an experience which brought home the point of the complexities that may also be attendant upon some of the methods that we may choose to use as part of the learning process. Having spent a fair amount of time discussing the egregious issue of violence against women, I decided that visual media help the students to get some real world insights into the nature and magnitude of the problem of rape in particular as a form of violence against women. I also wanted to give context to our understanding of challenges and possible solutions and obstacles to pursuing justice. The documentary I chose for this purpose was ***The Greatest Silence: Rape in the Congo*** by Lisa F. Jackson. It uncovers women's experiences of sexual violence as a weapon of conflict in the DRC. The post graduate class was one where virtually all students were coming from key segments of the legal profession – prosecutors, magistrates, law officers; legal activists, law enforcement and so on. But as members of society, they were also coming from personal spaces

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<sup>4</sup> In most countries today there are more than a wide range of institutions such as crisis centres, action and support groups and contact organisations engaged in consciousness raising efforts of one kind or another whose experiences can filter back into the law school to aid the learning of law by students.

<sup>5</sup> For a critical dialogue this from the African continent on imbuing such skills in students see Ziyad Motala **Legal Education In South Africa: Moving Beyond the Couch-Potato Model Towards A Lawyering – Skills Approach: A case for a comprehensive course on legal research, analysis and writing** 113 South African Law Journal 1996 pp 695-701

<sup>6</sup> An example from my own jurisdiction is the reform of inheritance laws in Zimbabwe, which was preceded by a detailed research project on inheritance practices in the country.

that shape their understanding of such issues. As such their reactions to the documentary were not just from a legal perspective but also from a social and personal context. In using this very direct method of confronting laws with reality, I was unprepared to deal with the student who broke down and sobbed uncontrollably because this method resurfaced very painful experiences with sexual violence.<sup>7</sup> What I got from utilising this was the reality that with modern technologies that are available for use in the classroom we may have to learn new skills: listening skills, counselling skills.

#### **IV The book: Women and Law: Innovative Regional Approaches to Teaching, Researching and Analysing**

Finally, let me conclude by sharing information on the just completed book on teaching women and law which I alluded to earlier. At the Faculty of Law at the University of Zimbabwe women's law as an academic discipline has been explored and taught as a regional post graduate diploma programme in the 1990s and since 2003 as a fully fledged Masters programme. Reflecting on more than 20 years of the programme's development in the Eastern and Southern African context, the academic staff collectively determined that there was merit in turning their reflections into a book that documents what we do, how we do it and why we do it. Putting teaching experiences in a book provided a chance to consider the implications of teaching and researching using a truly grounded, human rights influenced exploratory framework that maps and interrogates women's experiences with the law in its many different forms and manifestations. The book is an attempt to answer critical questions on how we shape, conduct and develop the courses we offer and the end products – our graduates. It shares experiences and reflections on strategies, methods and approaches to developing women's law in Africa, drawing from the teaching of the Masters in Women's Law. For academics who teach similar courses, it is hoped that the book will provide reflective insights and promote dialogue on teaching and learning experiences across continents.

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<sup>7</sup> I was also surprised that one of the students, who is a magistrate, found the documentary so disturbing that she stated that had she known its contents before hand, she would not have watched it. Yet these are the same people tasked with applying the law in such cases! This in fact shows why they need to see such documentaries.