

# LEGAL EDUCATION

## Impressions of South Africa

Recently I visited South Africa to assess the nature and quality of legal education there, in order to be in a better position to provide assistance in the reconstruction of the legal system which is under way. It was a unique experience, one of the most moving and stimulating of my life.

### A context

From abroad one learns through media reports of the lawlessness in South Africa, of the potential for violence and armed conflict, and of the difficulties faced by the political players in the transformation to a new, democratic South Africa. My experience was very mixed, like so much in that marvellously diverse and culturally plural society.

It would be the rare visitor to Johannesburg these days who does not feel an unusual degree of fear or apprehension: I certainly did. There is a very significant crime problem on the streets, but the South African daily *Business Day* is full of 'crime in the suites' as the vast extent of corruption and business crime is now being revealed. At times it seems a nation almost without law, if we focus only on the positive law of the state. Yet right across the country there is a high degree of popular activity dealing with crime and intra-community disputes at the local level: there is a continuing, pervasive struggle at grass roots level, throughout the country, to establish order. In that dangerous enterprise a substantial basis for a new legal order is being created.

This 'popular justice activity' is over-shadowed in the media by the inter-community conflict, so often simplistically and quite inaccurately portrayed as being *ANC v Inkhata* or *The Rest v Zulu*. The situation is too complex to make sense of in this brief article, but let it be said that the ANC has a large young and urban Zulu component and that Inkhata has, in the eyes of many black Africans, disgraced itself by its opportunistic and previously unimaginable alliance with the radical, racist white Right.

It seems likely the new South Africa will be a republic with a federal structure, three tiered and divided into nine

regions (there is much of interest there for Australian public law academics to monitor). Measures to deal with race discrimination, as well as sex discrimination, will be high on the agenda, as will affirmative action and the development of new regimes for dealing with crime, especially youth crime.

A high percentage of the new black leadership has experienced police brutality and arduous prison regimes: reform of the repressive state apparatus must be on their agenda. New systems of labour and corporate regulation will emerge, and there is considerable interest in environmental issues, family and consumer law. Interesting work is being done in developing new policies in land, mining and fisheries. Fisheries, a huge export industry, is currently being reorganised through co-operatives. And there is the amazing prospect of a country with eleven official languages – talk about multiculturalism and the law!

What does this description have to do with legal education in South Africa? It is the context, or part of it, for legal education in South Africa. As we know, especially after the Pearce Report on legal education in Australia, law has to be understood in context!

### The transition

The problems of South Africa present opportunities: the violence and oppression of apartheid have contributed to a commitment to the building of a fair and just society. It is now a society in transition, and a part of the transitional ideology is a strong, pervasive commitment to the Rule of Law. From the sidelines we have watched the installation of a pluralist transitional government, constitution and constitutional court. And there will be a new government after 27 April 1994, led and advised by a highly sophisticated group of ANC people – many of them lawyers – from the new President (undoubtedly Mr Mandela) down.

Over the longer term, South African legal education is going to be a significant force in developing that commitment to the Rule of Law into some degree of reality. To support legal education in South Africa will be to support the emergence and maintenance of

the rule of law, or what has come to be known in South Africa as a 'human rights culture'.

### Radical academics

What is the state of legal education in South Africa? Like so much else in that country, it is a complicated story as there are several dozen law schools, spread from the Republic of Venda in the north-east down to the Western Cape. One could sum it up by saying that legal education is going through a difficult transition, beset by a huge problem of a lack of resources in some sectors, yet with great potential for those directly involved and for those who become a part, though small, of that process.

What impressed me about the institutions I visited – nearly a dozen, including most of the historically black universities (HBUs in local parlance) – was the commitment of a large number of young legal academics to the development of their discipline for the benefit of their country. If they just wanted to make a pile of money for themselves the path is through private practice, not through the academy.

Another impression was the openness of South African law teachers. At a personal level I was treated with great warmth, generosity and hospitality. At the level of ideas, I found that legal academics, isolated from much that has happened in legal scholarship, are looking abroad for comparative perspectives. No wonder then that at each visit I found it exhilarating to sit with groups of law teachers, talking law and the experiences with the problems of social transformation, state regulation, bureaucratisation and the nature of civil society in the contemporary world. Comparing experiences, exchanging ideas, forging academic – and personal – links; talking revolution, and beyond to the hard bit: putting it together and holding it together, not *by law* but *with law*.

I should make it clear: we are not talking about an emerging, dependent neo-colonial consciousness as has sometimes occurred in other, post-colonial Third World countries, although clearly neo-colonialism is a big danger

right across post-apartheid South Africa. While the radical transformation is opening up the old legal system to analysis and re-constitution, there is historically a strong intellectual tradition in mainstream South African law schools. Today this is carried forward by a younger generation of critical scholars, and a relatively small but committed and impressive black sector working mainly in the HBUs. These two groups, who seem to work well together, are conscious of the need to develop a new legal order, incorporating traditional African law and drawing on the experiences of others, but making it a home-grown system appropriate to the needs and values of South Africans. A flood of new ideas is being released.

### Blacks in law school

A word or two about the problems facing the HBU law schools. There is an extreme lack of resources. For the most part established in the 1970s for political reasons, they have beautiful buildings, an enormous number of law students (science and technology was largely foreclosed 'for whites only'), few staff (the ratio is probably ten times worse than in Australian law schools), and almost no books and journals. These circumstances, plus low pay, mean that it is hard to recruit academic staff and hard to keep them. A savage staff-student ratio and little material for

students to read often results in a high degree of rote learning through a system of big lecture classes and examinations.

All of this is bad enough, but two other factors affect the quality of legal education. For most black students, the language of instruction – usually English – is not their first language, and perhaps not even their second, as some may have had Afrikaans. Making the situation far worse is the parlous state of the secondary school system since the late 1970s, and especially the mid-1980s, when the ANC policy was to make the country ungovernable through mass action, often mass youth action.

White South African law schools have developed affirmative action programs. As far as I could tell all law schools there have Academic Support Programs which are essentially one year bridging courses to get students who lack a sound educational experience up to speed.

In any discussion of legal education in South Africa, one should mention the University of South Africa. UNISA, as it is generally known, is a distance education only university, and has 122,000 students! Of these, about 8000 are law students. While UNISA has a matriculation standard, it is the nearest to an open learning institution in the country. It is UNISA which provided Nelson Mandela and many other black South Africans the opportunity to study law, although a few universities never held

to the apartheid line, and admitted some black students. (As far as I know they were Cape Town, Natal, Rhodes and Witwatersrand.)

### Law clinics

An important part of most law schools is a legal aid clinic, usually a community legal centre. These vary in size and case-loads, but some have full-time lawyers, substantial general support staff and hundreds of cases each month involving a wide range of matters, not unlike those handled in Australian community legal centres.

While work in the centres is usually voluntary for students, it is likely that more law schools will make it compulsory. In some schools it is one of two options given to final year students, the other being a research paper. As a result of changes in the 'practical legal training' requirement (which people there told me were influenced by the NSW Law Society blueprint!) graduates will be able to count for admission their experience as a student (or graduate) working in the university-based centres.

For Australian students, post-graduate students, legal academics and legal workers, I highly recommend a spell in South Africa. It can be an experience at the coal-face of legal and social change that should appeal to readers of this journal.

**Gill Boehringer**

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*If you are interested in providing assistance to South African legal education please contact Gill Boehringer (Law School, Macquarie University, NSW, 2109). Macquarie University has established the Southern Africa Legal Education Assistance Foundation with the aim of providing material assistance of various kinds, and co-operating with individuals and other institutions who wish to assist. In improving legal education in South Africa we can improve the prospects for a fair and just society there. It is a rare opportunity, and one which I am convinced will greatly enrich Australian legal education.*

## CONFERENCES

### *People's Rights!*

*An international conference on public legal services*

**Date:** 27-30 June 1994  
**Venue:** University of Kent at Canterbury, England  
**Contact:** Law Centres Federation, Duchess House,  
 18-19 Warren St, London W1P 5DB Fax (071) 387 8368

### Legal education conferences

#### *Association of Law Teachers 29th Annual Conference*

**Date:** 27-29 March 1994  
**Venue:** New Hall, Cambridge, England  
**Theme:** Competence, skills and access as applied to legal education  
**Contact:** Mike Cuthbert, Nene College,  
 Moulton Park, Northampton, NN2 7AL, UK Fax (44) (0604) 721 214

#### *Socio-Legal Studies Association Annual Conference*

**Date:** 28-30 March 1994  
**Venue:** Nottingham University, England  
**Themes:** Legal skills and education  
**Contact:** Petra Wilson, Law Department, Nottingham University,  
 Nottingham, NG7 2RD, UK Fax (44) (0602) 515 696