

TEACHING SOCIAL JUSTICE TO LAW STUDENTS THROUGH COMMUNITY SERVICE - THE SOUTH AFRICAN EXPERIENCE

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In this paper 'social justice' is regarded as referring to the fair distribution of health, housing, welfare, education and legal resources in society, including, where necessary, the distribution of such resources on an affirmative action basis to disadvantaged members of the community.¹ Social justice in this sense is concerned with satisfying the 'needs' rather than the 'wants' of society. Law students can play a valuable role in assisting indigent members of society to satisfy some of these needs by engaging in community service programmes.

Most law schools in South Africa give students very little academic credit for community service carried out as part of their legal studies, for example work in legal aid clinics or Street law programmes. Many university law faculties have had legal aid clinics since the 1970s and Street law programmes since the late 1980s. Both programmes involve community service by law students which deserve academic recognition.

A. Legal Aid Clinics

In this section it is intended to consider the following: (i) the definition of legal aid and law clinics; (ii) the background to legal aid clinics in South Africa; (iii) how legal aid clinics can be integrated into academic teaching; (iv) the community service component of legal aid clinic work; (v) how legal aid clinics can teach social justice.

1. Definition of a legal aid or law clinic

Legal aid clinics are offices staffed by law students under the supervision of qualified lawyers which provide free legal services to indigent members of the community (ie. they deal with live clients with real life legal problems). The term 'law clinic' is much broader in that it may include clinics that operate as legal aid clinics, but in some law schools, particularly in the United States, law clinics sometimes restrict their activities to simulated legal practice and do not deal with live clients. Even if they do deal with the latter they do not necessarily focus on poverty law problems.

In a developing country such as South Africa where there are vast economic and social

¹Cf AM Honore 'Social Justice' in R Summers (ed) Essays in Legal Philosophy (1968) 68; PN Bhagwati 'Human Rights as Evolved by the Jurisprudence of the Supreme Court of India' 1987 Commonwealth Legal Bulletin 236.

²DJ McQuoid-Mason 'The Organisation, Administration and Funding of Legal Aid Clinics in South Africa' (1986) 1 NULSR 189 193.

³Cf N Franklin 'The Clinical Movement in American Legal Education' (1987-9) 2 NULSR 55 64.

differences between rich and poor, and where the majority of the population do not have access to proper legal services, law clinics take the form of legal aid clinics and deal predominantly with poverty law matters. Thus legal aid clinics give students a valuable window into the world of poverty law and the real life problems of underprivileged members of society. In the context of the new South African Constitution which enshrines a number of social and economic rights work in a legal aid clinic sensitizes law students to both the theory and practice of social justice.

2. Background to Legal Aid Clinics in South Africa

At the time of the first international legal aid conference held in South Africa at the University of Natal, Durban in July 1973 there were only two university legal aid clinics in the country. These were at the University of the Witwatersrand run by staff and at the University of Cape Town run by students. The third clinic was set up at the University of Natal, Durban immediately after the conference, and thereafter there was a proliferation of legal aid clinics. By 1982 sixteen of the twenty one law schools in South Africa had clinics. In 1987 an Association of University Legal Aid Institutions was set up, and by 1988 the Attorneys' Fidelity Fund had been convinced of the educational value of legal aid clinics. Thus the latter agreed to fund, on an annual basis and provided funds were available, the salary of a director at those university clinics that were affiliated to the Association and had been accredited by the local law society in their area of operation.

Most of the clinics engaged in general practice, although some areas of law such as divorce, motor vehicle assurance (third party) claims and deceased estates (except for very small estates), were closed to them by the law societies. The vast majority of cases involved labour matters such as wrongful dismissals, unemployment insurance and workmen's compensation for injuries; consumer law problems such as credit agreements (hire-purchase), defective products, loan sharks and unscrupulous debt collection practices; housing problems such as fraudulent contracts, non-delivery and poor workmanship; customary law matters such as emancipation of women and succession rights; maintenance; and, criminal cases. During the struggle against Apartheid many of the clinics at the progressive universities were involved with civil rights cases involving pass laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights.

⁴See generally DJ McQuoid-Mason An Outline of Legal Aid in South Africa (1982) 139-163.

⁵Constitution of the Republic of South Africa Act 108 of 1996.

⁶Sections 26 (housing - within available resources), 27 (health care, food, water and social security - within available resources), 28 (children) and 29 (education).

⁷McQuoid-Mason Outline of Legal Aid op cit 139.

⁸The clinic was set up in the present writer's office on 1 August 1973 (McQuoid-Mason (1986) 1 NUSLR 191).

⁹McQuoid-Mason Outline of Legal Aid op cit 139-161.

¹⁰McQuoid-Mason (1986) 1 NUSLR op cit 197.

¹¹Generally for the types of cases handled by legal aid clinics see McQuoid-Mason Outline of Legal Aid op cit 139-161.

With the advent of democracy in South Africa in April 1994 the legal aid clinics are still dealing with poverty law problems, some of which such as housing, the quality of police services and social security have continued as a result of non-delivery by the new Government, partly due to inefficiencies and obstruction by bureaucrats employed by the old regime, many of whom retained their jobs as part of the political settlement. One or two clinics have moved from general practice to more specialised constitutional issues. Thus at the University of Natal, Durban, in addition to the ordinary Legal Aid course there is a specialist Clinical Law course which focusses on women and children, administrative justice and land restitution. However, the majority of clinics continue to engage in general practice and fewer restrictions have now been imposed by the law societies. Furthermore the latter also allow candidate attorneys to do their mandatory internships in accredited clinics. As yet law students do not have the right to appear in the lower courts on behalf of indigent litigants, although student practice rules have been in the pipeline since 1985. It is hoped that the new Government will introduce these in the near future.

Student activities in a legal aid clinic expose them on a regular basis to social justice issues in the new South Africa. Clinical work enables them to obtain a realistic insight into whether the Government is able to deliver on the ambitious list of socio-economic rights enshrined in the final Constitution.

3. Integrating Legal Aid Clinics into Academic Teaching

Apart from social justice aspects of courses in Jurisprudence most other law courses teach students how to operate in a first world commercial legal environment rather than a third world poverty law situation. This is understandable because students who have spent long years studying at university, sometimes after considerable personal and family sacrifice, expect to deal with clients who can compensate them adequately for their services. Work in a legal aid clinic together with the study of certain aspects of poverty law reminds students that

¹²Constitution of the Republic of South Africa Act 200 of 1993 s 236(2).

¹³The Attorneys Act 53 of 1979 s 2 (1A) (b) was amended by s 2 of Act 115 of 1993 to allow aspiring attorneys to 'perform community service approved by the society concerned' - provided that the person who engages them is practising the profession of attorney, inter alia, 'in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic' (s 3(1)(f)).

¹⁴The present writer drafted Student Practice Rules for South Africa based on the American Bar Association Model Rules for Student Practice (Council for Legal Education and Professional Responsibility State Rules Permitting the Student Practice of Law: Comparisons and Comments 2 ed (1973) 43) and submitted them to the Association of Law Societies of South Africa in April 1985 for onward transmission to the then Minister of Justice. Although the rules have been approved by all branches of the practising profession and the law schools they have been consistently and clandestinely blocked by beaurocrats in the Department of Justice. The new Minister of Justice, who took office in 1994, has given an undertaking to have the rules implemented.

there is whole other world of legal practice.

Legal aid clinic work has implications for the teaching of law because 'poverty law' is very often neglected in formal law curricula which tend to focus on 'rich peoples's law'. A successful legal aid clinic programme requires students to be trained in the relevant substantive law subjects which reflect the needs of legal aid clients. Students also need to have the necessary skills to service clients professionally and effectively under the supervision of a qualified member of staff. Some universities provide law students with both , but very few give students academic credit for the work done by them. The fact that a Legal Aid course is examinable like other courses means that it is not marginalised. At the same time it forces students to focus on practical aspects of social justice in at least one of their courses.

Universities such as the University of Natal, Durban have a formal Legal Aid course which covers relevant aspects of substantive law not dealt with in the ordinary syllabus such as practical aspects of legal aid and the right to counsel; prison law; children's rights; consumer protection; unemployment insurance; workmen's compensation; social pensions; land law and restitution; litigation against the police; access to children and maintenance; and, motor vehicle assurance (third party) law. These topics are presented at seminars by qualified lecturers in the field. The Legal Aid course also includes skills training in clinic procedures; interviewing techniques; small claims court procedures; interaction with other aid agencies; and alternative dispute resolution. Both aspects of the course are examinable. In addition students are graded on their performance in the clinic and a public welfare study report which they are required to submit in the second semester.

4. Community Service Component of Legal Aid Clinic Work

Legal aid students engage in community service in two areas of their legal aid work. The one is where they service clients in the clinic, and the other is when they compile their report on a public welfare agency. Both aspects of their field work count towards their final academic mark for the course.

Law students in the legal aid clinic are divided into firms under the leadership of a senior partner. The latter is responsible for ensuring that students report for duty on the days that they staff the clinic, and for the smooth running of the clinic. Each firm is allocated a supervisor who is a qualified lawyer or member of staff who is responsible for supervising the work of the students. No advice, letter, document or legal process leaves the clinic without being scrutinized by the relevant supervisor. Furthermore where it is necessary for legal processes to be signed or for a client's case to be taken to court, the matter will either be dealt with by the supervisor, (usually with the responsible student in attendance), or referred

¹⁵Cf CJR Dugard 'A Review of South African Legal Education' in Faculty of Law Legal Aid in South Africa (1974) 160 161.

¹⁶See Department of Procedural and Clinical Law, University of Natal, Durban Professional Training Manual (1996) 23-25.

¹⁷Ibid.

to a lawyer willing to take on clinic cases. As mentioned students are graded on their performance in the clinic.

Students are also required to visit a public welfare agency, usually during their vacation periods, in order to assist the clinic in building up a local and national data base of useful agencies. Students spend time at the agency and thereafter write a report in which they cover the biographical details of the organisation; an organogram and description of its structure; a short history; a description of its functions and objects; the nature of its work and a summary of two case studies based on files and interviews; the main obstacles to the work of the organisation and how it seeks to overcome them; and, the future aims and plans of the organisation. The public welfare agency research project is graded and counts towards the legal aid student's final mark. The completed projects are kept in the legal aid clinic for reference purposes. They give legal aid students a good indication of the types of organisations that are providing social justice to certain parts of the community.

5. How Legal Aid Clinics Teach Social Justice

Social justice in the sense of acknowledging the importance of certain aspects of a welfare state, and the need to give preferential treatment to disadvantaged members of society, has been given some recognition in the South African Constitution. Legal aid clinics which deal primarily with disadvantaged citizens become an important agent of reality for measuring the success or otherwise of the social and economic promises enshrined in the Constitution.

By working in a legal aid clinic law students obtain first-hand knowledge of how ordinary people are experiencing social justice in the new South Africa. They also have an opportunity to experience the difficulties involved in using legal rules to make social justice attainable to the person in the street. Sometimes they have the good fortune to assist clients successfully in enforcing the rights to which they are entitled. Thus there are two important aspects of student work in a legal aid clinic: (a) the opportunity to help disadvantaged and indigent members of society to obtain what is due to them, and (b) the theoretical and practical exposure they receive to the social justice issues of the day - something that is not possible in a regular black letter law course.

To achieve the above there is a need for properly integrated clinical law programmes which give academic recognition for the community service role played by law students. Such programmes can provide a valuable social justice learning experience for law students.

B. Street Law

In this section it is intended to consider the following: (i) the definition of Street law; (ii) the background to Street law in South Africa; (iii) how Street law can be integrated into academic teaching; (iv) the community service component of Street law; and (iv) how Street law can teach social justice.

¹⁸See above note 5.

1. Definition of Street Law

Street law is a programme designed to enable law students and others to make people aware of their legal rights and where to obtain assistance. Street law explains to men or women 'on the street' how the law affects them in their daily lives. For example, every time a person buys something, rents a house, gets married or divorced, or is the accused or victim of a crime, he or she comes into contact with the law. Street law helps people to understand how the law works and how it can protect them. It also explains what the law expects people to do in certain situations, what kinds of legal problems they should watch out for and how they can resolve such problems.

Street law not only makes people aware of how the present legal system can protect them, but also encourages them to think about the type of legal future they would like in the future. This was particularly important during the negotiations for the new Constitution in South Africa when there was wide spread consultation with the public concerning its contents. The programme encourages tolerance by making participants argue and experience opposing viewpoints. It also encourages the use of alternative dispute resolution such as mediation, arbitration and negotiation to discourage people from resorting to violence by taking the law into their own hands.

By enabling law students to go out to schools and communities to teach them about the law, the Street law programme gives students an insight into the legal needs and aspirations of ordinary people.

2. Background to Street Law in South Africa

Street law originated at the Georgetown University Law Centre in Washington DC in 1972. Law students were sent out to the inner city schools where many young people in the black ghetto areas felt oppressed by the legal system. It was brought to South Africa in 1985 and a pilot project set up at the University of Natal, Durban for six months during 1986. The latter was so successful that it was converted into a full-time programme at the University of Natal in 1987. Shortly thereafter similar programmes were established at the Universities of Pretoria and the Witwatersrand. Since then they have spread to 17 of the 21 law schools in

¹⁹DJ McQuoid-Mason 'Reducing Violence in South Africa through "Street Law" Education of Citizens' in Gerd Ferdinand Kirchhoff, Ester Kosovski and Hans Joachim Schneider (eds) International Debates of Victimology (1994) 347-348.

²⁰DJ McQuoid-Mason 'Popular Participation in Constitution-making: The South African Experience' unpublished paper presented at INTERWORLSA Conference on Democracy and Transition in Developing Countries with Particular Reference to Africa, New York, United States of America, 23-24 March 1996.

²¹McQuoid-Mason in International Debates of Victimology op cit 348.

²²McQuoid-Mason in International Debates of Victimology op cit 349-350.

