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LEGAL EDUCATION IN AN ERA OF GLOBALISATION AND THE CHALLENGE OF DEVELOPMENT

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The article examines the challenges legal education faces as a result of globalisation with specific reference to African law schools. It considers the challenges and ways of meeting them. The practice of law in a globalised world requires a body of knowledge which is both complex and interdisciplinary. It requires the acquisition of a broad range of new skills and techniques of solving legal problems. To equip lawyers with the needed skills to practise law in a globalised world will require changes in the traditional law school curriculum. It will require a curriculum which trains lawyers for the practice of law in a dynamic and rapidly globalising world. African law schools lack adequate resources to implement the necessary changes in their curricula to meet the needs of a globalised legal education. African law schools also have to deal with the retention of highly experienced law teachers and scarcity of teaching materials. The retention of law teachers and the availability of teaching materials are essential to meet the challenges of legal education in a globalising world.

[L'article examine les défis que doit relever l'éducation juridique à cause de la mondialisation, avec une référence spécifique aux facultés de droit en Afrique. Il examine les défis et les moyens de relever ces défis. La pratique du droit dans un monde globalisé nécessite un ensemble de connaissances qui est à la fois complexe et interdisciplinaire. Elle nécessite l'acquisition d'un large éventail de nouvelles compétences et techniques de résolution des problèmes juridiques. Pour équiper les avocats avec les compétences nécessaires à la pratique du droit dans un monde globalisé il sera nécessaire d'apporter des changements dans les programmes traditionnels des facultés de droit. Il faudra un programme qui forme des avocats pour la pratique du droit dans un monde dynamique et de mondialisation rapide. Les facultés de droit africaines n'ont pas de ressources suffisantes pour mettre en œuvre les changements nécessaires dans leurs programmes pour répondre aux besoins d'une formation juridique globalisée. Les facultés de droit africaines doivent aussi chercher de retenir les meilleurs professeurs de droit, l'insuffisance du matériel d'enseignement. La rétention des professeurs de droit hautement qualifiés et la disponibilité de matériel pédagogique est essentiel pour répondre aux défis de l'éducation juridique dans un monde globalisé.]

Keywords: legal education, law in society, globalisation, development
practice of law, international and comparative law

Introduction

This paper discusses challenges in legal education in the context of globalisation, increased complexity and the interdisciplinary nature of the legal problems faced by legal practitioners with specific reference to developing countries, especially those of Africa. Worldwide, there has been significant expansion in both the amount of knowledge and the number of new specialised fields with which lawyers have to deal. There has, for example,

been a rapid expansion in international regulation of trade and financial transactions in such areas as payment systems, natural resources contracts, licensing, franchising, intellectual property, establishing and operating a foreign investment, and the resolution of international disputes to name a few areas.¹

Lutz argues that in the era of globalisation, legal education faces two challenges:² (a) how to respond to the paradigmatic changes related to legal practice itself, brought about largely by the revolution in electronic communication and information technologies; and (b) the globalisation of national economies and growing standardisation of professional requirements involving legal services. He makes an important observation that changes to legal education to respond to the needs of the practising profession are not new in history. Courses like administrative law were developed in the 1940s to provide students with an understanding of the role of administrative agencies as governmental activity grew and became central in many kinds of practice. Many law schools, beginning in the 1970s, introduced environmental law as a subject warranting separate treatment. The study of international commercial arbitration, international investment law, financial markets, environmental law, human rights law and international criminal law and many other subjects responded to the needs of the time. What is different today is the rapid pace of the changes driven by technological advances and globalisation of the world economy.

Both legal and non-legal professions have the following characteristics in common:

- a highly complex body of knowledge combined with the ability to use intellectual processes which are, at least to some extent, particular to the profession
- certain practical skills and professional techniques without which this knowledge cannot be applied in the profession's practice
- the capacity to use such knowledge day to day in the service of other people's interests to solve, or to help solve, practical problems arising within the sphere of the profession
- a client relationship arising from the complexity of the subject matter which severely limits the client's ability to make informed judgments and so renders him or her, to a large extent, dependent upon the profession.³

This article is organised into four sections beginning with a look at traditional approaches to legal education and its capacity to meet the challenges of development; secondly, an examination of the challenges

¹ Folsom, Ralph H et al (2012) *International Business Transactions: A Problem-Oriented Coursebook* 11 ed at 1999; Reimann, Mathias W et al (2013) *Transnational Law: Cases and Materials*.

² Lutz, Robert E (2012) 'Reforming Approaches to Educating Transnational Lawyers: Observations from America' 61(3) *Journal of Legal Education* 449. Available from: <<http://www.swlaw.edu/pdfs/jle/jle613lutz.pdf>>

³ Gower, LCB (1967) *Independent Africa: The Challenge to the Legal Profession* 102.

globalisation presents to legal education; thirdly, a look at the challenges of development and the contribution legal education can make to the development effort, the alleviation of poverty and the improvement of life for all; and fourthly, an evaluation of Africa's capacity to undertake the necessary reforms in legal education to meet the challenges of globalisation and development.

Traditional approaches to legal education

The traditional law school curriculum was not designed to train lawyers for a transnational practice or to meet the challenges of development. In the United States most law schools follow what is famously referred to as the Langdell model, launched at Harvard in 1870–1871.⁴ The typical first-year law school curriculum requires general common-law courses such as property, contracts, criminal law, torts, civil procedure and constitutional law followed by a two-year, less-structured program in which students choose from a set of electives in the areas of jurisprudence, corporations, trusts and estates, international law, professional ethics, evidence, bankruptcy, insurance, and courses designed to teach professional skills, for example negotiations and legal writing. More often than not, the study of transnational and comparative law is limited to survey courses in the subjects.⁵ But as Harvard Law School noted when it introduced its new curriculum, with the rise of specialisation, globalisation and an increasingly regulatory environment at both the domestic and international levels over the past several decades, the practice of law has become international in scope and has come to require a systematic grasp of statutory and regulatory institutions and practices as much as an ability to glean principles of law from court decisions.⁶ Today, lawyers throughout the world face a body of knowledge that is made more complex by interdisciplinary perspectives on law and the growing importance of familiarity with foreign legal systems, international law and international trade law in an increasingly interdependent world.⁷ John Sexton notes that

⁴ McArdle, Elaine (2008) 'A Curriculum of New Realities' *Harvard Law Bulletin* (Winter) 21. Available from: <http://www.law.harvard.edu/news/bulletin/2008/winter/feature_1.php> (The article explains Harvard Law School's new curriculum.)

⁵ Thus, for example, the University of Cape Town's Faculty of Law declares: 'The LLB degree provides students with a sound knowledge of the general principles of the South African legal system, and an ability to use legal materials effectively. Graduates should be able to assess critically, interpret and apply the law and have the historical, comparative and jurisprudential background that is essential for a thorough and critical understanding of law and legal institutions.' Available from: <http://www.law.uct.ac.za/print/prospectivestud/progs/basic_legal/>

⁶ McArdle, Elaine (2008) 'A Curriculum of New Realities' *Harvard Law Bulletin* (Winter) 19. Available from: <http://www.law.harvard.edu/news/bulletin/2008/winter/feature_1.php>

⁷ As 'Special Tribute: The SMU Law School and 50 Years of International Legal Education 1947–1997' (1998) 4 *NAFTA: Law and Business Review of the Americas* 23 states: 'Dramatic changes in global relations have borne out the foresight of the late SMU School of Law Dean Robert G. Storey and the late Professor A. J. Thomas, Jr. 50 years ago: we live in a world that requires a radically different vision of legal

'[t]here are few significant legal or social problems today that are purely domestic', adding that it 'is virtually impossible to avoid the transnational implications of almost any subject'.⁸ The penetration of international law into domestic law continues to grow, not only through international agreements but also through the creation and growth of supranational, intergovernmental organisations such as the World Trade Organisation (WTO), World Intellectual Property Organisation (WIPO) and the United Nations Commission on International Trade Law (UNCITRAL) as well as various regional economic organisations such as the European Union (EU), Association of Southeast Asian Nations (ASEAN), Economic Community of West African States (ECOWAS), Southern African Development Community (SADC) and the North American Free Trade Agreement (NAFTA).⁹

In today's world these organisations play a significant role in the development of law.¹⁰ They increasingly adopt international conventions which have direct impact on domestic law and have created tribunals that adjudicate between member states and in some cases citizens of those states. The WTO, for example, provides various international dispute resolution panels, and although the panels' decisions must be incorporated into domestic law, the panels demonstrate that countries have to look beyond their own borders for sources of law that apply to transactions arising in the domestic context.¹¹ A further example is the significant work done by the WIPO and WTO under

education, in which one of the Law School's objectives should be the promotion of greater contact and understanding of the many legal cultures that make up our global community.'

⁸ Sexton, John Edward (1996) 'The Global Law School Program at New York University' 46 *Journal of Legal Education* 329 at 331. This law school has done more to internationalise its law program than perhaps any law school in the world. According to Clark, David S (2012) *Comparative Law and Society* at 347: 'In 1994, the private New York University (NYU) announced the creation of the world's first global law school program. Supported by a large endowment, the initiative intended to invite foreign law professors (most to teach for a full or half semester), foreign scholars (professors, judges, and government officials for one to six months) and foreign graduate students to NYU to interact and collaborate with resident professors and students. Some of the funds would generate innovations in the curriculum and finance conferences that reflect the impact of an emerging global economy. In 1997, NYU School of Law had almost 225 foreign citizens — representing over 50 countries — enrolled out of 1500 students. At this level of commitment, as foreign and American faculty and students spend time together, they will both learn about the international legal order in a more denationalized manner as well as gain new perspectives on American law.'

⁹ See Barrett Jr, John A (1997) 'International Legal Education in U.S. Law Schools: Plenty of Offerings, But Too Few Students' 31 *Journal of International Law* 845 at 848–50.

¹⁰ The United Nations Commission on International Trade Law (UNCITRAL), for instance, has elaborated the UN Convention on Contracts for the International Sale of Goods as well as Arbitration Rules.

¹¹ For a discussion of the internationalisation of domestic law, see Ku, Charlotte & Borgen, Christopher J (2000) 'American Lawyers and International Competence' 18 *Dickinson Journal of International Law* 493 at 505–11.

the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of 1994 in the field of intellectual property. In Europe, the European Union has played a key role in the development and integration of law within the European Community. Although integration has progressed much further in Europe than in most other parts of the world and decisions of the European Court of Justice and regulations of the European Commission are binding law on member states' domestic law, other regions — for example, African countries — have started to develop similar approaches.¹² The practice of law today is far more influenced by settings outside the courtroom than it has been in the past. Students need more training in the legislature and regulatory processes, and need to become adept at creative problem-solving in order to help clients with complex real-world issues. These developments led to Justice John Perry observing that:¹³

'[There] has never been a greater need for well-educated and well-motivated lawyers in the community and an approach that draws more on the legal imagination and on entrepreneurship and thinking outside the box. At the time when the twin forces of globalisation and information technology are creating new horizons in most fields of human endeavour, they pose new challenges for the practice of law.'

In addition — due to the transformation of the global economy into an increasingly interdependent one and the heightened significance of information and knowledge to production, management and services throughout the world — there are fundamental alterations in the key forces that drive wealth generation and power relations in the globalised economy. The main elements of this change are the increased pace of globalisation; what Sawyerr calls the 'commodification' of knowledge and the centrality of its generation and application to social and economic development; and the increased openness of national borders to flows not only of goods and services but also of knowledge and information.¹⁴ This has resulted in a growing disparity between the demands placed on the legal community and its ability to meet those demands — to supply the skills needed to master an expanding transnational practice while also meeting the challenges of development.¹⁵ Twining observes that the 'mission of an institutionalised discipline [of law] is the advancement and dissemination of knowledge and critical understanding

¹² Southern African Development Community (SADC) Treaty in 1992. The SADC envisaged the setting up of dispute resolution mechanisms. Article 32, SADC Treaty, 1992.

¹³ Perry, Justice John (2000) 'Challenges of the New Millennium' *Newsletter of the Commonwealth Legal Education Association* no 84 at 18. See also Ku, Charlotte & Borgen, Christopher J (2000) 'American Lawyers and International Competence' 18 *Dickinson Journal of International Law* 493.

¹⁴ Sawyerr, Akilagpa (2004) 'Challenges Facing African Universities: Selected Issues' 47(1) *African Studies Review*.

¹⁵ Blackett, Adelle (1998) 'Globalization and its Ambiguities: Implications for Law School Curricular Reform' 37 *Columbia Journal of Transnational Law* 57 at 58–59.

about the subject matters of the discipline'.¹⁶

Therefore, the question of how law schools can best prepare their graduates to practise law in this new 'world without borders' is a crucial matter.¹⁷ There is general agreement that the internationalisation of legal education, the teaching of comparative law and making lawyers aware of issues of poverty, the widening gap between the rich and the poor and globalisation are appropriate responses to the challenges of legal practice in the 21st century. For one thing, as Daly observes, the globalisation of legal education is certain to continue, and its pace is likely to accelerate.¹⁸ According to Daly, two forces will continue to influence its development and the pace thereof. The first is the marketplace. If employers conclude that lawyers educated with a global perspective bring added value to transactions or litigation, they will hire disproportionately from law schools offering this training. Students are the second force; if they conclude that a global perspective of law enhances their career opportunities and mobility, they will devalue a law school without such a perspective.

Although there is broad agreement on the need to develop a legal curriculum that is responsive to the challenges of globalisation, there nonetheless still is disagreement as to what type of curriculum changes are needed to meet the challenges, as Blackett points out.¹⁹ She identifies three contending approaches that have been advocated. The first is that the transformation taking place is of minimal concern to the basic structure of legal education because lawyers deal primarily with legal issues. Since the basic concepts underlying a transaction remain the same, the traditional concept of legal education should remain unchanged. According to this approach, well-trained lawyers can always learn new laws, and the current structure of legal education is adequate to cope with the challenges of globalisation, development and internationalisation.

The second approach argues that more is required to prepare lawyers for the seismic changes taking place. Sanchez argues that lawyers who do not command the law, language and culture in which they are counselling their clients, whether for transactional or litigation purposes, are not performing their duties competently and ethically.²⁰ Legal education needs to be

¹⁶ Twining, William (2009) *General Jurisprudence: Understanding Law from a Global Perspective* at xiii. See also Twining, William (2001) 'A Cosmopolitan Discipline? Some Implications of "Globalisation" for Legal Education' 1(1) *Journal of Commonwealth Law and Legal Education* 13-29.

¹⁷ Kay, Mary Anne (2001) 'Teaching and Scholarship in a World without Borders'. Available from: <<http://www.aals.org/presidentsmessages/pmnov01.html>>

¹⁸ See Daly, Mary C (1998) 'The Ethical Implications of the Globalization of the Legal Profession' 21 *Fordham International Law Journal* 1239. Available from: <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1568&context=ilj>>

¹⁹ Blackett, Adelle (1998) 'Globalization and its Ambiguities: Implications for Law School Curricular Reform' 37 *Columbia Journal of Transnational Law* 57.

²⁰ Sanchez, Gloria M (1997) 'A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal

modified by increasing global exposure—adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centres with global connections, and augmenting the number of formal international links and exchange programs.²¹ This approach proceeds on the basis that the present arrangements are not adequate and do not produce lawyers fit to practise law in a globalised world. It calls for the development of degree programs that produce lawyers who are exposed to the complexities of law in a globalised world. Harvard Law School has concluded that its curriculum should ensure that students are introduced to administrative, international and comparative subjects, and that the traditional focus on court decisions in the common-law system should be supplemented by materials and methods that better address the role of lawyers as problem-solvers and leaders in public and private settings.²² Many schools have introduced degree programs that require a mix of domestic and international law courses. For example, Cornell University has a JD/LLM degree program that complements the international law coursework of the JD degree with classes at masters degree level emphasising the political, historical and economic dynamics of transnational transactions.²³ Some schools focus on integrating comparative, international and foreign law perspectives in the entire law school curriculum and are not restricted to specific courses dealing with foreign law.²⁴

The third approach calls for a profoundly different tactic, advocating a qualitative rather than a quantitative change in legal education. It argues that legal education should be reconceptualised in accordance with the global economic and social transformation currently taking place and should develop a new curriculum.²⁵ This more drastic approach calls for a program that would produce lawyers with degrees enabling them to practise law anywhere in the world.²⁶ It would seem that developing such a degree would

Language of the Major U.S. American Trading Partners' 34 *San Diego Law Review* 635 at 637.

²¹ Myers, Ken (1995) 'World Gets Smaller as Number of International Programs Grows' *National Law Journal* (11 December). Myers observes that in the 1970s there were only a handful of foreign legal study programs, mostly in England and big cities elsewhere in Europe. By 1995 more than 100 schools offered opportunities to spend a summer or a semester in such diverse locales as Malta, South Africa, Australia and Israel.

²² McArdle, Elaine (2008) 'A Curriculum of New Realities' *Harvard Law Bulletin* (Winter) at 21. Available from: <http://www.law.harvard.edu/news/bulletin/2008/winter/feature_1.php>

²³ *Cornell Law School 2002–03 Catalog* 20.

²⁴ The New England Law School in the United States, for instance, gave faculty members small stipends as initiatives to create global materials for incorporation into their courses.

²⁵ Clark, David S (1998) 'Transnational Legal Practice: The Need for Global Law Schools' 46 *American Journal of Comparative Law* 261 at 268–74.

²⁶ Besides working on international issues in a lawyer's home country, an American lawyer, for example, with a degree from a global law school could practise in a

be difficult to achieve. As Twining has observed, 'contexts involving comparison and generalisation across jurisdictions, traditions, and cultures have a natural thrust toward abstraction and simplification'.²⁷ Understanding law involves awareness of particular social, economic, ideological and historical conditions.²⁸ It has been pointed out that approaches to grappling with and resolving legal problems in different jurisdictions reflect the traditions and cultures of members of a given society and shed light on how legal scholars in that society think.²⁹ It would be difficult, if not impossible, to develop a law degree that adequately responds to the many different social and economic conditions that exist in the world today.³⁰

Instead, as advocated by the second approach above, the response should focus on training different kinds of transnational specialists and raising lawyers' general awareness of the broader social and economic dimensions of legal relations. This can be done through teaching international and comparative law courses, encouraging faculty- and student-exchange programs, and

foreign office of a US firm or the US branch office of a foreign firm. Further, companies with a foreign presence also need lawyers with knowledge of international law.

²⁷ Twining, William (2001) 'A Cosmopolitan Discipline? Some Implications of "Globalisation" for Legal Education' 1(1) *Journal of Commonwealth Law and Legal Education* 13-29. Sanchez has similarly observed: '[K]nowledge of one's cultural assumptions is crucial because choices are drawn from cultural contexts with which the individual may or may not be familiar. . . Culture and law, as cultural institutions, are objective (social) and subjective (interpretative) experiences which require reflection and awareness by the practitioner.' (Sanchez, Gloria M (1997) 'A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners' 34 *San Diego Law Review* 635 at 652-53).

²⁸ See Sanchez, Gloria M (1997) 'A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners' 34 *San Diego Law Review* 635 at 637.

²⁹ Blackett, Adelle (1998) 'Globalization and its Ambiguities: Implications for Law School Curricular Reform' 37 *Columbia Journal of Transnational Law* 57. Blackett suggests (at 69) that law schools need not aim at producing lawyers who know all the law, but rather students who can think critically, analyse complex materials efficiently, articulate their opinions cogently and persuasively, write forcefully, and represent their clients with integrity. These lawyers should be able to develop the skills not only to learn the law, but to recognise that they can influence and are influencing its constant — and according to globalisation, rapid, but certainly not linear — development. See also Gluckman, Max (1973) *The Judicial Process among the Barotse of Northern Rhodesia*.

³⁰ Twining observes that we know that the word 'lawyer' is both vague and ambiguous; for example, is it confined to private practitioners of law in active practice? Does it include judges, law teachers and legally qualified people employed in the public service or in the private sector in legal roles? Or does it cover any law-trained person? Similar considerations apply to terms like 'law student', 'profession', 'legal services' and 'legal work'. See Twining, William (2001) 'A Cosmopolitan Discipline? Some Implications of "Globalisation" for Legal Education' 1(1) *Journal of Commonwealth Law and Legal Education* 19.

integrating relevant aspects of international law into domestic law courses such as contract, property, torts and constitutional law. Students will obtain increased awareness of international legal issues arising in domestic law if they are introduced to international aspects of the domestic law courses studied (even if students do not come away from such a course with a complete understanding of the relevant legal issues, they will at least be aware that international legal issues may be implicated in domestic transactions).³¹ Another advantage of showing students that international law issues can arise in the domestic arena is that students' curiosity about international law and international issues is stimulated and may lead them to further study of these issues. Finally, the cost of such an approach is minimal as professors bear the relatively insignificant burden of educating themselves. Few disadvantages are associated with this approach. Although it could be argued that the lack of structure and context for the introduction of international and comparative law materials in this approach leaves students with an incomplete understanding of international law, the teaching of international law in the context of traditional law courses does not have to be done at the expense of basic international and comparative law courses. Rather, both types of law can be taught in such a way that one complements the other.

Globalisation and legal education: the challenges

The process of globalisation is clearly unstoppable.³² In the most basic terms, globalisation means integration — through world trade, financial flows, the exchange of technology and information, and the movement of people. The world has become international at many different levels. For example, with long-distance, transoceanic communication via phone, fax, e-mail or the internet and transportation via overnight courier, global communication and transportation are convenient, common place and affordable. On a business level, things have never been so internationalised and the rate of growth is exponential. The key feature is the increasingly integrated cross-border organisation of economic and financial activity around the globe. The number of multinational corporations has grown from a handful in the 1960s to the point where guides to multinational corporations are commonly limited to the top 500 companies.³³ These multinational companies not only sell abroad but also manufacture and incorporate subsidiaries all over the world.

³¹ Barrett Jr, John A (1997) 'International Legal Education in U.S. Law Schools: Plenty of Offerings, But Too Few Students' 31 *Journal of International Law* 845 at 855.

³² Joseph Weiler, speaking about the Global Law program at New York University Law School in 2002, observed: 'I take globalization as a given and I believe that it has had, and will continue to have many beneficial and negative effects on rich societies and poor.'

³³ *Fortune Global 500*, annual ranking of the world's most profitable corporations. Available from: <<http://money.cnn.com/magazines/fortune/global500/>>

With all this globalisation, both business and personal disputes become international. For example, where assets of a company are spread across several countries, a bankruptcy matter may involve more than one country. The lawyer needs to know the conditions under which the person administering a foreign insolvency proceeding has access to the courts of a state other than his or her own. The lawyer also needs to know how to recognise the conditions of a foreign insolvency proceeding and what sort of rules apply when insolvency proceedings take place concurrently in different states.³⁴ Parties in a sales contract may, for instance, live in different states and their countries may be party to the United Nations Convention on the International Sale of Goods, which might lead to the application of the convention to disputes arising out of the sales transaction.³⁵ Where jurisdictions are party to the United Nations Convention on the Limitation Period in the International Sale of Goods, a question of the time within which a party under a sales contract for the international sale of goods must commence legal proceedings against the other party to assert a claim arising from a sales contract or relating to its breach, termination or validity may implicate international law.³⁶

Several recent changes are making governments even more concerned with international issues. First, the growth in international trade, travel and communication forces governments to be concerned with protecting their citizens (both corporate and human) abroad, especially with regard to their business dealings.³⁷ Consequently there has been an increase in the scope

³⁴ The United Nations Commission on International Trade Law (UNCITRAL) has developed the UNCITRAL Model Law on Cross-Border Insolvency (1997). Available from: <http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html>

³⁵ UN Convention on the International Sale of Goods, Vienna, 1980. Article 1 provides that 'This Convention applies to contracts of sale of goods between parties whose places of business are in different States: (a) when the States are Contracting States; or (b) when the rules of private international law lead to the application of the law of a Contracting State.' Available from: <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>>

³⁶ UN Convention on the Limitation Period in the International Sale of Goods, New York, 1974. In art 1 it provides that the 'Convention shall determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time'. It sets out a uniform period. Article 3(1) states: 'This Convention shall apply only (a) if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States; or (b) if the rules of private international law make the law of a Contracting State applicable to the contract of sale.' Available from: <http://www.uncitral.org/pdf/english/texts/sales/limit/limit_conv_E_Ebook.pdf>

³⁷ *Elettronica Sicula SPA (ELSI) (US v Italy)* 1989 ICJ 15, 28 ILM 1109 (1989); *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, LP v Argentine Republic* (ICSID Case No ARB/01/3); *Piero Foresti, Laura de Carli & Others v The Republic of South Africa* ICSID Case No ARB(AF)/07/01.

and nature of domestic regulation of international interaction with others. An example is the growth of bilateral investment treaties.³⁸ Secondly, problems of the modern world are increasingly seen as transboundary in nature, especially pollution and global warming, which refuse to stay within national boundaries.³⁹ The result has been an explosion in the number of treaties dealing with transboundary issues.⁴⁰ Additionally, international organisations, both governmental and non-governmental, have grown. The processes of international law have expanded with the proliferation of international tribunals,⁴¹ the International Criminal Court,⁴² bilateral investment treaties,⁴³ environmental norms,⁴⁴ and human rights treaties.⁴⁵ All these arrangements impact on domestic issues.

³⁸ Guzman, Andrew T (2006) 'Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000' 60 *International Organization* 811-846, available from: <http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=andrew_guzman>. See also Guzman, Andrew T (1998) 'Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties' 38 *Virginia Journal of International Law* 639-688, available from: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=andrew_guzman>

³⁹ Blackett, Adelle (1998) 'Globalization and its Ambiguities: Implications for Law School Curricular Reform' 37 *Columbia Journal of Transnational Law* 57 at 62-63 (noting the failure 'of any individual state to regulate antitrust, environmental and labour policies effectively in light of the globalization of trade and finance').

⁴⁰ Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1988. Available from: <http://www.miga.org/documents/miga_convention_november_2010.pdf>. United Nations Convention on International Bills of Exchange and International Promissory Notes, 1988. Available from: <http://www.uncitral.org/pdf/english/texts/payments/billsnotes/X_12_e.pdf>

⁴¹ For example, the International Convention for the Settlement of Investment Disputes (ICSID) provides facilities for conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states in accordance with the provisions of the convention. The convention has been acceded to by a majority of the states in the world.

⁴² Established by the Rome Statute of the International Criminal Court, adopted in 1998. Available from: <<http://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>>

⁴³ See Comeaux, Paul E & Kinsella, N Stephan (1997) *Protecting Foreign Investment under International Law: Legal Aspects of Political Risk* 101.

⁴⁴ For example, Declaration of the United Nations Conference on the Human Environment (Stockholm 1972), available from: <<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>>. See also Convention on International Liability for Damage Caused by Space Objects (1972), available from: <http://www.faa.gov/about/office_org/headquarters_offices/ast/media/Conv_International_Liab_Damage.pdf>

⁴⁵ For example, Convention on the Elimination of All Forms of Discrimination against Women (adopted by UN in 1979, entered into force in 1981), available from: <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>. See also International Covenant on Civil and Political Rights (adopted by UN in 1966, entered into force in 1976), available from: <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>. See further International Covenant on Economic, Social and Cultural Rights (adopted by UN in 1966, entered into force in 1976), available from: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>

As noted earlier, in response to the challenges of globalisation, law schools in developed countries have introduced various international courses, many publish international law journals, summer-abroad programs are growing, and most campuses have international student organisations.⁴⁶ But the vast majority of students graduating from law schools continue to have little or no exposure to international law and comparative law.⁴⁷ In the US, part of the problem is the attitude of faculty and students, as many regard international law as either 'not law' or as some type of foreign law. But the response of faculty and students is different in African countries and other developing states. It can be argued that because of the foreign origin of African legal systems, African law schools do not resist learning foreign legal systems. The schools often teach the law of the former colonial master and frequently examine cases from the United States, Europe, Asia and other African countries.⁴⁸

The problem for African universities is not resistance to incorporating foreign legal systems into their curriculum but rather the lack of resources and means to implement the necessary reforms. As Samuel Manteaw has observed:⁴⁹

'The law school curricula in Africa have unique strengths. By a stroke of historical luck and necessity, Africa was one of the first continents to internationalize law curricula, and it continues to preserve and enhance that advantage. The curricula essentially consist of a broad-scoped pedagogy sensitive to different legal systems.'

The prevailing economic conditions and the shortage of resources in almost all African countries hamper Africa's attempt to meet globalisation challenges.⁵⁰ Although globalisation has helped to increase economic growth and wealth, this increase has not occurred on all continents or in all countries.

⁴⁶ See Clark, David S (1998) 'Transnational Legal Practice: The Need for Global Law Schools' 46 *American Journal of Comparative Law* 261.

⁴⁷ See Barrett Jr, John A (1997) 'International Legal Education in U.S. Law Schools: Plenty of Offerings, But Too Few Students' 31 *Journal of International Law* 845. This has led some schools to move toward the inclusion of international, comparative and foreign components into the first-year core curricular courses. See also Ku, Charlotte & Borgen, Christopher J (2000) 'American Lawyers and International Competence' 18 *Dickinson Journal of International Law* 493-503.

⁴⁸ See *Kachasu v Attorney-General* [1967] ZR 145. This case, which dealt with freedom of religion, is reproduced in Ndulo, Muna & Turner, Kaye (1984) *Civil Liberties Cases in Zambia*. The court's judgment cited several American cases, e.g. *Minersville School District v Gobitis* 310 US 586 (1940); *Zavilla v Masse* 112 Colo 183 (1944) and *Sheldon v Fannin* 221 F Supp 766 (1963).

⁴⁹ Manteaw, Samuel O (2008) 'Legal Education in Africa: What Type of Lawyer Does Africa Need' 39 *McGeorge Law Review* 903. Available from: <http://mcgeorge.edu/Documents/Publications/02_Manteaw_MasterMLR39.pdf>

⁵⁰ Daouas, Mohamed (2001) 'Africa Faces Challenges of Globalization' 38(4) *Finance and Development* 4-5 observes: 'On the one hand, globalization holds out to participants the promise of growth in trade and international investment; on the other hand, it heightens the risks of instability and marginalization.' Available from: <<http://www.imf.org/external/pubs/ft/fandd/2001/12/daouas.htm>>

Some argue that globalisation has exacerbated inequality.⁵¹ In the least developed countries and on the African continent in particular, a worsening of existing imbalances has impeded development and aggravated poverty. The impact of these changes was highlighted in Africa by economic and social changes specific to the continent from the mid-1970s to the 1990s. These include the virtual collapse of many national economies after international trade terms became unfavourable to economies dependent on the production and export of primary products, as well as civil wars and more recently the scourge of the HIV/AIDS pandemic.⁵² One consequence of the debt crisis and economic upheavals of the 1980s is that most developing countries have drastically cut per capita expenditure on education in real terms. This in turn has affected funding for universities and legal education,⁵³ especially with regard to the development of suitable curricula and the maintenance of quality in education. As a result, African legal education has not made the strides it should have made to adjust to the needs of the 21st century and to meet the challenges of globalisation. One consequence is that globalisation of legal education is unlikely to be truly inclusive.⁵⁴ Unless measures are taken to enable poor countries to participate in the process of internationalising legal education, globalisation is bound to marginalise poor countries.⁵⁵ The already wide gap between the quality of legal education in the developed world and the majority of developing countries is likely to further widen.

⁵¹ O'Rourke, Kevin H (2001) 'Globalization and Inequality: Historical Trends' Working Paper 8339, National Bureau of Economic Research. Available from: <<http://www.nber.org/papers/w8339.pdf>>

⁵² See Declaration of Commitment on HIV/AIDS (adopted by UN in 2001), available from: <http://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf>. See also Akukwe, Chinua (2002) 'HIV/AIDS in Africa: An Integrated Regional Approach' *Africa Notes* July/August, Institute for African Development, Cornell University.

⁵³ Samoff, Joel & Carrol, Bidemi (2004) 'The Promise of Partnership and Continuities of Dependence: External Support to Higher Education in Africa' 47(1) *African Studies Review* 67 points out that the average annual growth rate of public expenditure on education between 1970 and 1980 was 4.4%, but between 1980 and 1983 it was 9.2%. Capital expenditure suffered the most as the average annual growth rate was -20% between 1980 and 1983. Within higher education, public recurrent expenditure per tertiary student fell from \$6,461 in 1975 to \$2,365 in 1983. This decline in public expenditure was more pronounced in the Francophone countries.

⁵⁴ Samoff & Carrol observe that it is 'important to note the persisting dominant role of the most affluent countries, especially the United States, in higher education, including the volume of higher education and research . . . control over the most influential publication modes, and dissemination of prevailing ideas about research and education'.

⁵⁵ Wing, Adrien K (2001) 'The Role of Culture, Race, Gender and Language in Working Together: Developing Cooperation in International Legal Education' 20 *Penn State International Affairs Review* 35 raises concerns as to the inclusivity of globalisation. See Fine, Toni M (2001) 'Introduction and Overview — Working Together: Developing Cooperation in International Legal Education' 20 *Penn State International Affairs Review* 1.

African law schools need to be able to produce lawyers who can meet the demands of international practice and represent African countries in complex commercial transactions.⁵⁶ For example, African countries receive certain large investments in natural resources or large infrastructure projects only if their governments agree to a wide range of contractual commitments with foreign investors. Naturally, both the investor and the state in question seek to obtain the best possible terms over the long time span of such investments. The negotiation of these commitments is often difficult for African countries, which typically lack the financial and human resources to negotiate effectively. Faced with a highly competent and experienced legal team on the investor side, African nations may respond by delaying the negotiations or cancelling the investment contract when the full meaning and effect of its provisions become clear. Either way, the investment is destabilised and is of less value to both parties.⁵⁷

Legal education reforms and the capacity to meet the challenges

It has always been recognised that a lawyer must maintain and develop his or her professional skills to meet the environment he or she is practising in. This is especially important in the current era of information explosion. As noted earlier, law schools in the developed world have, in part, responded to globalisation trends with the development and encouragement of international exchange programs. In these programs, schools invite foreign law faculty as visiting teachers and sometimes establish more permanent relationships between law faculties. Some law schools offer a range of opportunities introducing students to international practice through internships at institutions such as the World Trade Organisation and development banks. A few have established clinics to address human rights, immigration and international business issues. Some offer skills courses, others provide seminars in which students can grapple with real-life cases or problems and actively discuss them in classes with small student to faculty ratios. As a further measure to prepare students to be globalised lawyers, many law schools allow credit for internships with foreign governments agencies, foreign courts and international organisations. Unfortunately, Africa is unlikely to fare well in exchange programs. Many factors militate against exchange programs between African law schools and schools of developed countries. Due to the perception that Africa is a continent fraught with political and economic instability, and a lack of infrastructure as well as stereotypes about Africa, many perceive the continent as an expensive and unsafe place to study. African students face challenges in securing financing to seize opportunities available in other countries or with international institutions.

⁵⁶ Ndulo, Muna (2007) *Feasibility Study on the Establishment of an African Legal Support Facility to Help Regional Member States in Creditor Litigation* (unpublished report prepared for African Development Bank).

⁵⁷ Ndulo, Muna (2008) 'The Case for Renegotiation' 5 *Zambia Analysis* 6.

Another major challenge for African countries is the establishment of viable continuing legal education programs aimed at practising lawyers in order to update them in developments in the practice of law. In the absence of such programs, lawyers are left with self-study — reading books, articles, and current decisions — to keep abreast of new developments in legal thought. It is widely acknowledged that this kind of self-education is not sufficient to keep a person up-to-date and competent as the interactive elements so crucial to training — for example, the opportunity for questions and answers, valuable discussions and the impact of a knowledgeable speaker on a topic — are missing. As stated at a regional seminar of the Organisation of Commonwealth Caribbean Bar Associations, ‘the legal profession individually and collectively has an obligation to meet the current needs and modern challenges by fostering schemes which provide a well-ordered system of continuing legal education.’⁵⁸

Typically, continuing legal education comprises training in various areas of substantive law (including new areas) as well as procedure and practice. Its objective is to equip lawyers with new skills and developments in the law. It is available to lawyers in practice as well as to judges. The approaches, methods, formats and scope of continuing legal education programs vary throughout the world. They range from informal seminars and in-house programs and conferences to structured programs with detailed curricula and courses leading to specialisation. An excellent example of a continuing legal education initiative is the professional educational project at the University of Cape Town named UCT Law@work.⁵⁹ The program offers short courses ranging from two-hour seminars to six-day certificate courses to members of the legal profession to assist them to specialise or update their knowledge in a field of law. The main providers of continuing legal education include national, state, territorial and regional professional associations, universities, law schools, government agencies and private interest groups. In Africa, law societies and bar associations bear the greater part of the responsibility for providing continuing legal education. Far too often, this imposes a burden on ‘volunteers’ who are busy practitioners giving what precious time they can to organise, conduct, encourage and sustain the process. Universities need to play a greater role in this field and should be in the forefront of advancing continuing legal education. Universities and law schools are established for this very purpose — to teach, train and disseminate knowledge. Unfortunately, African law schools are so severely constrained by underfunded budgets that very few are able to cope with finding increased funding for wider legal education which includes continuing legal education.⁶⁰

⁵⁸ Anderson, Nancy (2002) ‘Continuing Legal Education in the New Millennium’ Commonwealth Legal Education Association.

⁵⁹ <<http://www.lawatwork.uct.ac.za/>>

⁶⁰ Further, declining trade terms also increase the burden on resources. See Samoff, Joel & Carrol, Bidemi (2004) ‘The Promise of Partnership and Continuities

Technological change also brings an important new dimension to both the teaching and practice of law. In the past, legal education was about preparing people for the practice of law in the courts and, consequently, the mission of law teaching was certain and well defined. Today, however, law graduates enter all kinds of professions. It has become less obvious what needs to be taught in legal education — and how it should be taught. Unfortunately, imaginative courses are assumed to be more expensive or just more awkward for already hard-working educators bowing under the pressure of larger student numbers, less student certainty over careers and relatively poor salaries for academic staff. Fortunately, advances in technology may very well obviate some of these difficulties. Peter Martin has observed that ‘the pace and contours of change vary from place to place, but nearly everywhere the impact of digital information and communication on law-related functions seems both breathtakingly rapid and inexorable’.⁶¹ This is particularly important for African law schools, which do not possess the financial, logistic or linguistic resources to collect materials from all over the world.⁶² Collecting official gazettes, laws and case reports from many jurisdictions puts enormous demands on space and financial resources. The problem in most Africa states outside South Africa is not only the absence of foreign materials but an absence of legal materials in general. In desperation, many libraries fill their shelves with donated used books. However, this mode of staffing a library is not systematic, leads to many gaps and therefore cannot be a basis on which to build a library that will support research and lawyer training programs adequate to meet the challenges brought about by globalisation and the internationalisation of law.⁶³ The real solution is to build and use resources available online.

The opportunities of technology appear limitless. Properly utilised, information technology can be an enormous benefit in both the teaching and practice of law. Large numbers of students can read case law and other legal materials more efficiently online than by queuing up for access to a limited number of books in the library. Databases are being constructed to collect legal materials that were previously hard to find and extremely costly to

of Dependence: External Support to Higher Education in Africa’ 47(1) *African Studies Review* 67.

⁶¹ Martin, Peter W (1998) ‘Reducing the Cost and Improving the Quality of Course Materials Through Technology’ (paper prepared for December 1998 Conference of the Commonwealth Legal Education Association). Available from: <<http://www.law.cornell.edu/papers/clea98.htm>>

⁶² Grossman, Andrew (2002) ‘Towards Cooperation in Access to Foreign Primary Law’ 30 *International Journal of Legal Information* 1–2.

⁶³ Roznovschi, Mirela (1996) ‘Building an Electronic Law Library in a Foreign Country — The Internet Solution’ 24 *International Journal of Legal Information* 161–162 observes: ‘In the global legal environment, having a good foreign law collection is no longer just a privilege of prestige “star libraries”. If a library does not own foreign law books of primary sources, it can acquire comparable legal information in an electronic format, complementing it in time with paper commentaries, monographs, and dissertations.’

acquire and thus often not available to most libraries in Africa. Technology also offers the possibility that global scholarly exchanges may occur with relative ease. The problem in some parts of Africa, however, is the limited connectivity and ability of universities to acquire the computers, software and staff necessary to make these resources available to students.⁶⁴ In order for African countries to take full advantage of the technological advances, it is necessary to develop indigenous capacity in this field.⁶⁵ Only then can African law schools gain access to the legal information that is available.

The development challenges in Africa and other developing regions are such that these countries need well-trained lawyers who understand the role of law in the development process and law's transformative capacity. This means legal education should not only teach knowledge of law but also should promote an awareness of the economic context, business knowledge and management, and transfer skills in communication, negotiation, presentation and project management, and develop an intercultural awareness of how to use law to promote development. The traditional system of legal education in Africa replicated foreign models and produced lawyers committed to the values of the received legal culture, by and large trained to become legal technicians. They were encouraged to have little or no interest in, or comprehension of, the policy issues inherent in the law and did not see law as an instrument of change. Lawyers trained in this tradition are generally reluctant to criticise current law. Even as technicians they have limits, for few are competent to represent national and commercial interests in international transactions involving complexities of taxation and finance. As William Twining observes:⁶⁶

'From a global perspective, it is bizarre to find a purportedly liberal theory of justice that rejects any principle of distribution, treats an out-dated conception of public international law as satisfactorily representing principles of justice in

⁶⁴ Manteaw, Samuel O (2008) 'Legal Education in Africa: What Type of Lawyer Does Africa Need' 39 *McGeorge Law Review* 903 at 946 bemoans the underutilisation of technology in African law schools: 'Computer-assisted, student-directed learning and legal retrieval systems are virtually unavailable in most African law schools and law faculties. This state of affairs is an anomaly in the present global, information-based society and economy.' Available from: <http://mcgeorge.edu/Documents/Publications/02_Manteaw_MasterMLR39.pdf>

⁶⁵ Some international organisations are developing databases of African legal material, available online and on CD-ROM. Specifically, the African Development Bank and International Bank for Reconstruction and Development collect legal material on economic, commercial, administrative and financial matters; also the Organisation of African Unity, UN Food and Agricultural Organisation, International Labour Organisation, International Organisation for Migration, and Organisation for Economic Co-operation and Development. (Grossman, Andrew (2002) 'Towards Cooperation in Access to Foreign Primary Law' 30 *International Journal of Legal Information* 1.)

⁶⁶ Twining, William (2009) 'Law, Justice and Rights: Some Implications of a Global Perspective' in Ebbesson, Jonas & Okowa, Phoebe (eds) *Environmental Law and Justice in Context* 76. Also available from: <http://www.ucl.ac.uk/laws/academics/profiles/twining/Law_Justice%20_Rights.pdf>

the global arena, and says almost nothing about radical poverty, the environment, increasing inequalities, American hegemony (and how it might be exercised), let alone about transitional justice or reparations or other issues that are now high on the global agenda.'

Geo Quinot,⁶⁷ quoting Alfred Cockrell,⁶⁸ criticises legal education in South Africa as emphasising 'narrowly construed "private-law" subjects' and for having 'an aversion to the teaching of policy matters as part of the law syllabus'. He argues for a substantive vision of law, involving an obligation to engage with moral and political values in adjudication. Africa needs lawyers with the technical competence to do a first-class job in negotiating a contract, understanding international banking, drafting papers for international loan transactions or large infrastructure contracts, and building up institutions that strengthen governance structures and promote development. At present, most African governments turn to outside lawyers for complex international transactions. The legal problems of financing huge enterprises are clearly far more complex than the legal problems of borrowing from banks or traditional private sources. Good transactional lawyers properly trained in international concessions agreements can move the wheels of progress, while narrow, pedantic, unimaginative and ill-trained lawyers hinder much-needed development.

Courageous and imaginative lawyers can help achieve political stability in a multi-cultural society by helping design viable political institutions.⁶⁹ One of the primary tasks of a lawyer in a developing state should be the strengthening of law and legal institutions which constitute a precondition for economic development, social change and for having a modernising and innovative impact on the social order. International and comparative lawyers can likewise assist their countries in moving toward regional cooperation, trade and integration, and cooperation on the wider international scene. As such, lawyers in developing countries face challenging tasks not present in the more economically advanced nations.⁷⁰ African lawyers are expected to relate legal institutions, as well as social and political institutions, to the general and specific premises of expansion, development and transformation of their countries from rural subsistence economies to industrial economies catering for rapid economic growth based on distributive justice and a better life for all. To do this, a lawyer needs a broadly based education to enable adaptation to new and different situations as his or her career develops, an adequate knowledge of the more important branches of the law in both its principles and its international dimensions, and the ability to handle facts

⁶⁷ (2012) 'Transformative Legal Education' 129 *South African Law Journal* 411 at 413.

⁶⁸ (1996) 'Rainbow Jurisprudence' 12 *South African Journal on Human Rights* 1-7.

⁶⁹ Ndulo, Muna (2003) 'The Democratization Process and Structural Adjustment in Africa' 10(1) *Indiana Journal of Global Legal Studies* 315. Available from: <<http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1258&context=ijgls>>

⁷⁰ See Gower, LCB (1966) 'Foreword' to Seidman, Robert B *A Sourcebook of the Criminal Law of Africa* vi.

both analytically and synthetically. He or she needs the capacity to work not only with clients but also with experts in different academic disciplines. He or she must likewise acquire a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude toward, appropriate development and change.

How, then, can the quality of lawyers be improved to cope with these challenges? Universities and law schools need more imaginative degree programs. For example, more international and comparative law courses and research-oriented courses can equip law graduates with the skills necessary to conduct independent research on the tasks they face in practice and to write meaningful and informative papers that integrate law and policy for use by those charged with decision making. African law schools must seek to teach not only law as it is but also its development and its international context. The law degree should include courses that expose students to ideas and concepts in international law and comparative law, and that examine law in a developmental, socio-economic context. The objective should be to expose students to other legal systems in the world and to international legal norms. Schools should also have a place for perspective courses such as the sociology of law, and law and society.

Clinical legal education as part of the curriculum at African law schools could provide an enriching and significant component of the law school experience if used to engage students with disadvantaged members of the community. As Jessup observes, clinical programs need both a general clinic and a development clinic to deal with the twin problems of representing the poor in courts and also with training the lawyer to participate more effectively in the development process.⁷¹ To this should be added international clinics in such areas as human rights, labour, trade and the environment to expose students to international litigation and practice as well as international legal problems.

Though it is not difficult to restructure or modernise the curriculum, serious obstacles stand in the way of such changes. The most intractable problems relate more to implementation than to planning curriculum. Schools can achieve very little through better selection and organisation of courses if the methodology continues to be inadequate, if the libraries are insufficient and if research is non-existent. The downturn in the continent's economic fortunes of the 1980s and early 1990s has taken a heavy toll on African universities and their law schools and continues to impact negatively on the availability of resources to fund their operations. According to a 2010

⁷¹ Jessup, Grady (2001) 'Symbiotic Relations: Clinical Methodology-Fostering New Paradigms in African Legal Education' 8 *Clinical Law Review* 377. Jessup makes an excellent study of clinical education in Africa, identifying the problems and possible approaches to clinical education in African law schools.

World Bank report,⁷² Africa is grappling with a huge mismatch between student population and investment in higher education. Between 1991 and 2006, the number of students in higher education rose from 2.7 million to 9.3 million. This was an annual rise of about 16%, but public resources for expenditure grew by 6%. The report concludes that:⁷³

[In] most Sub-Saharan African countries, enrollment in higher education has grown faster than financing capabilities, reaching a critical stage where the lack of resources has led to a severe decline in the quality of instruction and in the capacity to reorient focus and to innovate.'

Recruitment, and particularly retention, of able African law teachers by inadequately financed universities has become increasingly difficult, and that problem too has affected the quality of legal education.⁷⁴ This is compounded by the fact that overall, the present university system in Africa is quite rigid. Administrations in African universities are often autocratic, over-centralised and run by managers insensitive to the changing needs of various academic disciplines. Law schools lack the autonomy and law teachers the flexibility to expand course offerings with imaginative courses. In the final analysis, effective law teaching can develop only with the development of research capacities in African law schools. For example, laws must be modernised to meet the needs of the 21st century. In order to enrich the teaching of law in relevant fields, law professors should study the policies and operations of the many new agencies and dispute settlement mechanisms that have been created in the international field so that they can include that knowledge in their courses. This has to be done in the context of African conditions. The examination of local conditions will enable lawyers to move away, as Gower observed, from the belief that 'English law is the embodiment of everything that is excellent even when applied to totally different social and economic conditions'.⁷⁵ What scholars discover in their research will thrust them into the African reality and make them aware of the way the law they have learned is operating and of the law's potential to transform the societies in which they live. One cannot overemphasise the important role that African law schools can play in general research and legal research in particular. As Sidney Hook observed:⁷⁶

'A university should serve society without being subservient to society, but it is not its function to remake society by reform, revolution or counter-revolution. Its task is to become a centre of intellectual adventures and discovery, a birthplace of fresh insight and vision, an arena where fundamental ideas are

⁷² The World Bank (2010) *Financing Higher Education in Africa*. Available from: <http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/Financing_higher_edu_Africa.pdf>

⁷³ The World Bank (2010) *Financing Higher Education in Africa* xiv.

⁷⁴ Samoff, Joel & Carrol, Bidemi (2004) 'The Promise of Partnership and Continuities of Dependence: External Support to Higher Education in Africa' 47(1) *African Studies Review* 67.

⁷⁵ Gower, LCB (1967) *Independent Africa: The Challenge to the Legal Profession*.

⁷⁶ Hook, Sidney (1973) *Education & the Taming of Power* 254-255.

pronounced, challenged, and clarified and where students of a subject are prepared by competent teachers to become its masters.'

Through teaching and scholarship, every African law school faculty member should strive to make his or her law school such a centre and should also undertake the more specific task of showing how fresh insight and vision can be translated into practical measures that bring about development, improved livelihoods among a great many people, and the democratisation of autocratic and unaccountable governments that exist in some parts of Africa. Too few African legal scholars are engaged in law and development research, and among those very few can escape the criticism David Riesman raised with respect to legal research in America when he wrote that 'too few professors are critical scholars, most of them are doing the housekeeping of the law, trying to keep track of decisions and make sense of them'.⁷⁷

Conclusion

The preceding pages have argued that the challenges to legal education brought about by globalisation need organised and well-thought-out responses.

To effectively deal with the challenges, African law schools need to address two crucial issues: first, the availability of teaching materials, and second, retention of highly trained law teachers. African law schools are in great need of teaching materials which not only provide analytical treatment of traditional law subjects but also introduce students to various topics of international and comparative law. The lack of materials could be alleviated by the use of electronic information. Improving connectivity of African law schools to the internet would give schools access to a wide selection of materials that would otherwise be unattainable. The problem of retaining highly trained law teachers is also critical as many schools currently experience high turnover of teachers. Bright young people with good commercial prospects are unlikely to remain in teaching unless they have a high perception of their worth through their work and from the way they are perceived by others. Few able people want to work for long in situations that offer limited rewards in either money or prestige — and such is the case with law teaching in Africa today. The problems encountered in maintaining continuity and retaining experienced law teachers in turn hinders the faculty's efforts to give the law school a sense of direction and purpose. On the other hand, a driving core of key faculty initiators, working to formulate a meaningful educational response to social and economic challenges and change, could inspire a generation of law teachers with a new sense of purpose and worth, giving rise to law schools that are effective, international and yet uniquely African.

⁷⁷ Riesman, David (1982) 'The Law School: Critical Scholarship vs. Professional Education' 32 *Journal of Legal Education* 110 at 115.

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