The Law Faculty of the University of South Africa

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In recognition of the vital role played by our universities in the development of the law and the legal profession, five articles on law faculties have already appeared in Consultus: the first, by Professor AH van Wyk on the Law Faculty of Stellenbosch in the April 1989 edition; the second by Professor Ellison Kahn SC on the Law Faculty of Wits in the October 1989 edition; the third by Professor Kobus van Rooyen SC on the Law Faculty of Pretoria in the April 1991 edition; the fourth by Professor DP Visser on the Law Faculty of Cape Town in the April 1992 edition and the fifth by Prof Boelie Wessels and DW Morkel on the Law Faculty of the Orange Free State in the October 1993 edition. In the article appearing in this edition Prof WJ Hosten tells the story of the Law Faculty of the University of South Africa. Hopefully, similar articles on other law faculties in South Africa will appear in future editions of Consultus.

The origins – the University of the Cape of Good Hope

Unisa’s law faculty may be said to have been born in stages. As in a sense is the case with all our universities founded before 1952, its “conception” may be traced back to the University of the Cape of Good Hope which was incorporated in 1873 in order to replace the Board of Public Examiners. The Board had hitherto, since 1858, supervised the examinations for the First and Second Class Certificates in Law and Jurisprudence, the first and only recognised legal qualifications in the country. In terms of the 1873 Incorporation Act, this was replaced by the University’s Certificate of Proficiency in Law and Jurisprudence and the LLB degree. According to DP Visser, the idea was that students would undergo their training at the South African College and then sit the Board Examinations, but it is notable that during the period 1865-1890, when the chair of law at the college was vacant, students had to prepare themselves for the examinations – a foretaste of a future role of the University of South Africa as we shall see; and it is clear to me that during the whole period 1873-1918 “external students” could and did present themselves for the examinations without formal training, especially since...
The first rebirth – The University of South Africa

In the year 1916 South Africa’s university structure was drastically altered. The two colleges who had hitherto prepared students for the examinations of the University of the Cape of Good Hope, SACS of Cape Town (already mentioned) and Victoria College of Stellenbosch were made independent universities, each with a law faculty, by Acts 13 and 14 of 1916. By Act 12 of 1916, the University of the Cape of Good Hope was succeeded, or replaced, by the University of South Africa with its seat in Pretoria. It was to be a “federal” university in that six university colleges were incorporated with it: Grey College of Bloemfontein, Huguenot University College of Wellington, Natal University College of Pietermaritzburg, Rhodes University College of Grahamstown, Transvaal University College of Pretoria and the South African School of Mines and Technology of Johannesburg. They were joined by the Potchefstroom University College in 1921.

The new University commenced its activities on Tuesday 2 April 1918. Advocate (later judge) William Putman was appointed the first dean of the law faculty in 1921, a post which he occupied until 1925, shortly before his elevation to the Bench. He was succeeded by Prof ED (“Binky”) Burchell, the well-loved professor of the Natal University College who is still remembered for his “at home” training of candidate attorneys and civil servants – a foretaste, as it were, of Unisa’s function in later years. In 1932 the deanship was taken over by Advocate CP Brink, later to become a judge of appeal. His term of office expired in 1939 and the one to take over was Prof GG McKerron of Rhodes University College, nephew of the better known Prof RCM McKerron. Advocate CP Brink took over again during 1944 and 1945 and after him Prof Burchell served again for two years. In 1948 and 1949 the dean was Prof GMJ Sweeney of Natal. 1950 was a deadless year (the calendar says “to be appointed”) while Prof HF Sampson, also of Natal, served for a spell in 1951. In 1952, as we shall see, the first “internal” dean was appointed.

The University exercised its supervising and examining functions through a senate and faculty boards consisting of members of the constituent colleges. The law faculty board met once a year to discuss rules, regulations, and syllabuses (uniform for the whole university including the colleges) and the appointment of examiners. All the colleges, as well as the “external” students for whom the University still catered, wrote the same examination, although the appointed examiner usually circulated his draft paper to his colleagues at the various colleges for their comments. In the programme for the first graduation ceremony in 1919, under the LLB graduates appear the names of inter alia SP le Roux (later Minister of Agriculture) and CR Swart, later State President, both of Grey College, while amongst the “external” students was Jean Etienne de Villiers. Thus the dual function already operating under the University of the Cape of Good Hope was continued. We were told by surviving members of that period that despite the heterogeneous constitution of the faculty board, matters were as a rule dealt with very amicably and swiftly – they smilingly recalled that some meetings were held in a pub of the dean’s choice! Happy days... Meanwhile, the various constituent colleges had begun to “secede” as independent universities, the first being the University of the Witwatersrand in 1922 and the University of Pretoria in 1930. By 1946, the rest of the colleges were expected to follow suit: clearly, the time had come to consider the University’s future.

The second rebirth: a teaching university, the early years

When the end, or at least a drastic diminution of the existing functions of the University was foreseen as imminent, Prof AJH van der Walt, then professor of History at the Potchefstroom Universiteitskollege vir CHO, was appointed as a one man commission to make recommendations with regard to the University’s future. The main recommendation of this man of foresight was that provision should be made for the teaching, by means of correspondence, of the many unattached “external” students of the University through a division of external study. This new function, besides the existing ones of supervision and examination, was inaugurated in 1946 when Prof Van der Walt was appointed as Director of External Studies together with seventeen lecturers.

The first law lecturer to be thus appointed was Mr HL Swanepoel, later to become professor and dean at Potchefstroom. He was there for a very short spell only and 1947 saw the appointment of Dawid (“Judge”) de Villiers as a senior lecturer. He was a Stellenbosch graduate (it is, incidentally, remarkable that until the present day Unisa’s law faculty has always been headed by Stellenbosch graduates - can this be a coincidence?) who afterwords acquired a BA (Hons) in Law and English Literature at Oxford. His was an awesome task: until the late fifties he was the only permanent lecturer in the Faculty and as such responsible (only assisted years later by a few helpers such as Drs HP van Dyk, “Ras” Beyers and PJ Kotzé) for drawing up lecture notes in all the law courses, marking assignments and examinations for a rapidly growing number of students (1 250 started studies at Unisa in 1946 and the number grew at an average of 10% per year to reach 2 215 by 1951) and dealing with administrative matters – a her-
culean task! He became the first "internal" Unisa dean in 1952 and became the first professor of law in 1954. This was the time too when the "new" University was battling to gain recognition as a teaching institution. The external division was originally regarded with great suspicion by the South African universities establishment and other outsiders, and "safeguarded" by the fact that the Senate, until the first promotions in 1952, consisted solely of representatives of other universities and colleges while the faculty boards were also still dominated by external members. People like Prof Daan Pont refused to accept that law could be taught "by correspondence". This continued even after 1951, when after the "secession" of the last constituent college, the one at Potchefstroom, the University was by statute (Act 30 of 1951) reconstituted as a university of tele tuition with Prof Van der Walt as its first principal. This suspicion is, incidentally, one of the reasons for Unisa's jealous insistence on high standards. Another benefit arising from this state of affairs was that for many years, even after the internal staff members of the University had swung the "balance of power" their way, the law faculty had the benefit of the experience and advice of outside members on its Faculty Board such as the late Prof HR (Bobby) Hahlo, Tom Price, Ben Beinart, JP VerLoren van Themaat, SJH ("Tootsie") Steven, JB Yeats, JC de Wet etc. Only in 1967 was the de facto position, according to which the representatives of other universities were more and more content to leave policy-making in the hands of the Unisa staff, made legal when the compulsory representation of other universities on the various bodies of the University of South Africa was abolished by statute.

In the meantime, help for Prof De Villiers finally arrived. It was a big day when at the beginning of 1957 the unheard-of number of five new staff members took up appointment: Mr A C Myburgh, a Stellenbosch class-mate of JC de Wet, who soon afterwards completed his doctoral studies in the field of Anthropology and left the faculty to teach that subject as well as Customary Law in the Faculty of Arts - a historical division which lasts to this day; Prof NJ van der Merwe, also a Stellenbosch graduate, who was made head of the Department of Mercantile Law (Prof De Villiers being the head of the only other department, that of Roman-Dutch law) and was to leave a few years later to become professor of Roman-Dutch law at the University of Pretoria and eventually director of Justice College; Mr CWH Schmidt, an LLB graduate of UOFS who soon afterwards left Unisa to join Tukkies as a professor of Constitutional and Public International Law, but returned in 1966 to Unisa to become one of the country's leading experts in the law of evidence; and finally two other Stellenbosch products, the author whose main subject was Roman Law and Miss LJ Wagner (now Prof Van Zyl, back at Unisa after a long absence). In 1959 they were joined by Advocate ML Benade who had obtained the LLB after a BA at Stellenbosch, had been practising at the Bloemfontein bar and was to become one of the best-known company lawyers in South Africa. With these, the basis for a new beginning had been laid; it only needed a new and firmer hand, Prof De Villiers by then being in poor health.

A firmer foundation: prof WA Joubert

Prof WA Joubert, dean 1959-1968

Prof Willem Joubert, after obtaining an MA degree in Classical Languages at Stellenbosch, had been enticed into law studies by Prof Morrie Malherbe ("Joubert, wil jy 'n onderwyser word?"). He began his academic career at Potchefstroom and from there went to UOFS where he was promoted to a chair and became dean. For this man of vision and innovative ideas, the Bloemfontein of the fifties became too small and when he was invited to join the Unisa law faculty in 1960 he was quick to accept this new challenge. With him he brought Mr SA Strauss, a criminal lawyer with a Stellenbosch and UOFS degree who, amongst all his other accomplishments, was to become the undisputed leader in the field of medical jurisprudence.

Prof Joubert's arrival in Pretoria marked the beginning of a new period in the history of Unisa's law faculty. He was appointed dean in the same year (Prof De Villiers retired in 1961) and from then on the faculty really took wing. Much has been written on the achievements of this remarkable man; who died in 1992; suffice it to refer here to his work at Unisa which earned him the title of "father" of the Faculty. In the first few years of his leadership the LLB curriculum was restructured and its minimum duration extended by one year, still a feature of the Unisa LLB today; his initiative in the purchase of Prof Cowen's library laid the foundation for the building up of what today is one of South Africa's finest law libraries; another "first" was his launching of a "hands across the seas" programme by inviting the famous romanist, Prof Max Kaser as a guest lecturer; Codicillus, the first South African faculty journal, was launched; he founded the Institute of Foreign and Comparative Law and the VerLoren van Themaat Centre for Public International Law. He never published much apart from his well-known thesis on personality rights, but more than made up for this by acting as promoter for probably more doctors in law than anyone else before him or since and thus starting a tradition of fostering postgraduate study which still marks the Faculty today; his "products" sound like a roll of honour in South Africa's legal world.
HJO van Heerden, NJ van der Merwe, CWH Schmidt, SA Strauss, ML Benade, HS Cilliers, NE Wiehahn, JC van der Walt, CG van der Merwe, PM Bekker, J Neethling, SWJ van der Merwe, ADJ van Rensburg – there may have been others. All of them, except Van Heerden, lectured at Unisa at some stage or are still lecturing there; with Prof Joubert’s well-known insistence on perfect language use, it is no wonder that at least five of them were to receive the prestigious Toon van den Heever prize of the Afrikaanse Akademie vir Wetenskap en Kuns. And above all, he was to become the first woman professor, the writer of constitutions and the new rector of Unisa; PM Nienaber (now judge of appeal), JC van der Walt, MFB Reinecke, LGT Wessels, GC Neethling, SW van der Merwe, CN Barrie, PM WJ Hosten, dean 1969–1973, 1980–90; author of this article

But Prof Joubert’s influence remained, even after 1973 when he was seconded to Butterworths to start the huge task of editing LAWSA, after 1978 when he retired – and it remains even now after his death. When he laid down the reins, a firm foundation had been laid on which the Faculty could base its further growth. And grow it did!

After 1968 – growth

Although statistics make for dry reading, growing student numbers and staff numbers reflect at least part of the Faculty’s history since 1968. By the time Prof WJ Hosten’s term of office expired in 1973, student numbers had risen to 3 705 (12 829 “course students”). In that year the Faculty elected Prof ML Benade as dean to succeed him, but after half a year in office he left the University’s service to enter the attorneys’ profession. Prof AJC Copeling of “Copyright” reputation, again a Stellenbosch graduate, took over. By the time his “reign” came to an end in 1979, the student number stood at 4 528 (16 854 course students). He left a few years later for the University of the Western Cape; in the meantime Prof Hosten had been re-appointed to the office he holds to this day. By 1993, as this article is being written, the number is 8 431–44 445 course students; an increase of 245% in twenty years! The output did not quite match this growth: where in 1973 Codicillus could announce that in the previous ten years 1 490 qualified lawyers had been “let loose on the public”, the number for the ten years before 1993 came to 4 013, an increase of 169%. There are many reasons for this, not least of which being the fact that as the admission requirements at other universities were increased, more and more of the “overflow” had recourse to Unisa – which might account for the increase of student numbers as well as the proportional increase in students of less than top quality.

Another interesting facet of the student body deserves mention. From the beginning, black, coloured and Indian students had availed themselves of the “new” Unisa’s facilities; by 1949 they made out more than one third of the student population. As time went on, more and more such students became attracted to (and qualified for) university study and helped to swell Unisa’s student numbers, despite the fact that in 1959 the so-called university colleges for non-whites had come into being (Unisa having had to accept, albeit with misgivings, the familiar burden of “guardianship” to these institutions until their independence in 1971). Until recently, the number of black students at Unisa exceeded that of all black students at other universities. Thus by 1993, of the total number of 122 866 students, 52% were blacks. In 1962 already Codicillus was proud to announce that two blacks had obtained the LLB degree. At present the percentage of black students in the law faculty is more or less 38%. It is a sad fact again that the output of graduates has not quite risen in proportion; admittedly, students of a disadvantaged background find it more difficult to adapt to independent university study through teletuition. It is a problem of which we are painfully aware and we have high hopes that an ambitious programme of student support on which we are embarking will help to alleviate
it. Nevertheless, we are proud of our record of bringing law studies within the reach of these communities; while a quick count through Butterworth's "Who's who in Southern African Law" reveals that just about 25% of those listed have a Unisa qualification, it is probably true that Unisa has produced more black lawyers than all the other universities together. We shall come back to this later.

With the rise in student numbers there obviously had to be a concomitant rise in staff numbers. In 1975 Codicilllus proudly announced that approved permanent posts in the Faculty had risen from 5 professors and 6 senior lecturers in 1960 to 15 professors, 23 senior lecturers, 4 lecturers and 9 junior lecturers. By 1983, the staff complement was 69 lecturing posts and 6 administrative ones. In 1993 the corresponding number is 96 permanent lecturing (including 37 professors) and 8 administrative staff members; add to that the student assistants and other temporary staff and the number comes to just about 150. An interesting statistic is that over 60% of the lecturing staff are women (including 11 professors and 11 associate professors): no gender discrimination here!

**Unisa's students**

Numbers tell only part of the story: quality is of course of paramount importance. As we look at our alumni and how they have performed in all branches of the legal profession, it is clear that they have given the lie to the critics who used to maintain that "decent" legal training was not possible through distance education. We take pride in the fact, for instance, that there is no university in Southern Africa which does not house Unisa graduates as professors, amongst whom Proff DJ van der Post, WBL Cingo, J Mihalik, Y Cassim, BF Ndaki (Bophuthatswana), DJ Devine (Cape Town), J Labuschagne (Fort Hare), GE Devenish (Natal), JV du Plessis, JL Snyman (UOFS), AC Gelders (Port Elizabeth), CFC van der Merwe (a former Unisa lecturer), GM Ferreira (Potchefstroom), PE van der Merwe, PH Thomas, FW van Oostrum (Pretoria), FJ de Jager, GN Barie, JC van der Walt (now vice-rector), MW Prinsloo, IM Rautenbach, MP Olivier, (Like Barrie and Van der Walt a former Unisa staff member) (RAU), JG Grogan (Rhodes), IA van den Heever, WM van der Westhuizen (University of the North), HJ Erasmus, MA Rabie, GC van der Merwe, SE van der Merwe (Stellenbosch), all four of them formerly at Unisa, DS Koaana (Transkei), SK Parmanand (Venda), JC Bekker, AJGM Sanders (another ex-Unisa staff member), NJC van den Bergh (Visa), K Asmal, GG Visagie (Western Cape), E Cameron, H Chauke (Wits), MG Erasmus, ES Mchunu, AEB Dhlotho (Zululand): a proud testimonial to the tradition of producing "jurists" rather than "technicians" started by Prof Joubert and, before him, by the "old masters" like Prof JC de Wet whom, with Prof Joubert, we could welcome for quite a few years after his retirement, as honorary professor. But outside academe also, our students were able to prove their worth. Many outstanding members of the attorneys' profession learnt their law at Unisa or obtained a post-graduate qualification (Unisa has produced more LLD's than any other South African university and the course work LLM introduced some years ago, proved especially popular with attorneys). To name but a few: Mr A van Vuuren and Mr A Botha of the Association of Law Societies (three other previous directors, HF Mellet, FJ Bosman and CE Eckard were Unisa graduates and lecturers - as well), T Burrell, MO Dale, W Lane, SHW Larkan, RC Laurens, DJS Mosshidi, CK Petty, GM Pitje, WL Seriti, AH Trikanjee, GC Webster, the late JR Steyn, AC Hutchinson, A Gildenhuys and many more.7

Fewer Unisa alumni will be found at the Bar or on the bench: the average age of our students is 31 and most of them are already in employment or have embarked on a career by the time they commence their studies with us, consequently comparatively few venture on a career as an advocate. Still, some of them do: eg, at least four of the present senior counsel at the Pretoria Bar (E Bertelssman, ED Mosenene, JP Coetzer and RKR Zeis) are Unisa graduates. Some also have made it to the bench, amongst whom Judges HJ Hugo, CS White, H Daniels, SJ Mynhardt, BR Southwood (chairman of the General Bar Council before his elevation), JAM Khumalo and JC Kriegler, judge of appeal and chairman of the Independent Election Commission.

In contrast, and as one could expect, the public service houses an impressive number of Unisa alumni. From the nature of things staff members of the Department of Justice, scattered all over the country, are dependent on Unisa for their studies; also, Justice College, with which Unisa Law Faculty has had close ties since its inception, trains many students for the Unisa examinations. It is therefore not surprising that the last three directors-general of the Department (JP Coetzee, SS van der Merwe and J Noeth) obtained the LLD degree at Unisa, as did the late JC Ferreira, the first director of Justice Training, the attorney general of Transvaal (JA van S d'Oliveira), hundreds of magistrates and many of the senior officials in the Department. Prof PEJ Brooks, the chairman of the Competition Board, is not only a Unisa graduate but was, until his secondment to the Board, head of the Department of Mercantile Law and vice-dean of the Faculty; in both capacities, as head of that department and as chairman of the Board, he succeeded Dr SJ Naudé, until recently director-general of the Department of Trade and Industries. A third such former head, Prof AA Landman, is at present seconded to the Industrial Court as president; one of his predecessors in that post, Mr DB Ehlers, is one of our LLD graduates, as is Prof NE Wiehahn who "created" the Court. Other alumni are Mr T van Wijk, one-time Registrar of Financial Institutions, Mr T Schoeman, erstwhile Registrar of Companies and Advocate FJ Bosman, Chief Family Advocate. Mr CW Babb is one of our products engaged in diplomatic service. In local government, too, the Faculty has made its contribution: Dr GJ Davids and Advocate JH Leach, former mayors of Pretoria and Mr AP Burger, previous town clerk of Johannesburg, are examples of this.

Strangely enough, politics do not seem to have been attractive to Unisa-trained lawyers - so far: Mr JJ Loots, former speaker of parliament and DHH Gibson, MP for Yeoville, are the only names that come to mind. But it seems clear that in the new South Africa this will change drastically. Unisa's involvement in the tertiary education of persons of colour, and especially the fact that internees on Robben Island and similar institutions made use of Unisa's facilities on a large scale, made the names of Unisa's past (and present) students very conspicuous in their various organisations and/or in present politics. Names that come to mind are Mr C Ramaphosa, Mr Jay Naidoo, Mr R Suttner, Mr P Maduna, Ms Bridgettte Mabandla, Advocate M Motshokgwa (who is also a Unisa staff
Mr Nelson Mandela visited Unisa soon after his release from prison in 1990 in order to collect his LLB degree certificate.


He accomplished much whilst in prison, and will enable me to join the forces of men and women, white and outside South Africa, whose ability to serve their respective communities has been considerably enhanced by attending Unisa.

Extract from a letter of Mr Mandela to the Dean of the Law Faculty on receiving notification that he had completed the LLB degree.

Inside the Faculty

What else, besides students and lecturers, entitles a Faculty to call itself a centre of excellence? The heart of a faculty, surely, is its library. Unisa, starting virtually from scratch in 1960, has managed to build up one of the finest law libraries in the country, now consisting of 120 000 volumes; especially its collection of modern comparative materials is unsurpassed in South Africa. Research is of course regarded as a very important priority at all universities. That in this respect too Unisa has...
played its role is apparent \textit{inter alia} from the numerous publications from the pen of its lecturers; to some of them we have already referred. A quick glance through LAWSA, for instance, will probably reveal more Unisa names than all the other combined. The Faculty furthermore houses no less than six research centres: the Institute of Foreign and Comparative Law, known for its opinions on foreign law which have been accepted and used by many state departments, courts and private practitioners; the VerLoren van Themaat Centre for Public Law Studies which was founded in memory of the late Prof JP VerLoren van Themaat as an offshoot of the Institute and originally concentrated on public international law, is these days also branching out in the field of environmental law; the Tax and Business Law Centre has for years been offering very popular informal certificate programmes in company law and labour law; the Centre for Indigenous Law has several publications to its credit, based on field work mainly in rural areas; the Unit for Legal Historical Research specialises in the translation of the works of the old Dutch authors, i.a. Matthaeus’ De Criminius; and the Criminal Justice Research Unit tackles topical research topics such as affordable personal security, the management of crime, etc. Faculty members do not only make the results of their research available to the outside world in the form of books and articles, but also take part in their publication: five journals are published or co-edited by six more (The Tydskrif vir Hedendagse Romeins-Hollandse Reg, SA Journal for Criminal Justice, Fundamina which is the new journal of the Society of Legal Historians, Annual Survey of SA Law, Justa’s Business Law and Medicine and Law); many also serve on the editorial boards of other journals. With this tradition, it is perhaps not surprising that the editor of Consultus is a Unisa graduate.

A third vital function of a university is community service. Here too Unisa brings its contribution in the form of membership of many standing advisory committees, commissions of inquiry and other statutory bodies and also through its very active Legal Aid Centre which offers legal advice and undertakes litigation for more than 5 000 needy people per year and in this way introduces students to legal practice. It is headed by Prof RA Jordaan who is also the first woman ever to serve on the Legal Aid Board.

Conclusion

The University of South Africa is an university for South Africa, for all its peoples and communities. It has since 1946 fulfilled its mission, to bring affordable education to all South Africans through the medium of television, with distinction and with pride in its standards. In this task the Faculty of Law has played its part. Throughout the country and beyond, thousands of lawyers have been enabled by Unisa to serve the public in various ways. In so doing, Unisa’s law faculty has not only enriched all communities, including and especially the underprivileged ones, but has also played a role in developing South African law. It is the Faculty’s aim, in the coming new South Africa, to continue with this task and hopefully to help bring about a culture of respect for the law and for human rights in which all South Africans can share.

Morality and government

The moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadows of life – the sick, the needy and the handicapped.

Hubert Humphrey
Vice President of the United States (1964–1968)

Footnotes

1 Like Prof Kahn (1989 Consultus 112) I shall endeavour to keep footnotes to a minimum. Most of this article is based on material gleaned from Maurice Boucher’s history of Unisa “Spes in Arduis” (1973), research undertaken, in co-operation with Ms FJ Bosman (as she then was), for my article “The Law faculty of Unisa: a historical survey: (1973 (2) Codicillus 4), the records of the University and personal recollections over the last 56 years.

2 For more particulars about this period, see 1973 (2) Codicillus 4-7; DP Visser “As durable as the mountain: the story of the Cape Town law school since 1859” 5 (1992) Consultus 32.

3 See also Boucher op cit 56.

4 If one is technical, as Andreas van Wyk remarked 2 (1989) Consultus 42, this Act was presumably signed a few seconds before those of the two Cape universities, which makes the law faculty of the University of South Africa the oldest in the country. But let us rather regard it as part of the “honourable draw” to which Dennis Cowen (loc cit) refers.


7 I have refrained here and further on from referring to “external” students at the constituent university colleges who graduated before the University started to teach, for obvious reasons.