INTRODUCTION

The Faculty of Law of the University of Natal is unique among South African law faculties in that it has within it two separate, autonomous and different Schools of Law. The Faculty has two fully stocked libraries, two curricula, two staff establishments, two faculty boards and two deans. This doppelgänger effect is the offspring of the historical development of the faculty, which has evolved into a preferred organic structure that has brought a creative, competitive diversity to the enterprise of legal education in the University of Natal.

THE ORIGINS OF THE FACULTY

The Background

From the beginning, in 1846, persons wishing to qualify as attorneys or advocates in the colony of Natal, had to prepare themselves by private study for the examinations for the Natal Law Certificate or the Natal Advocates Examination. This hardship was alleviated only in 1910, when the government of the colony established a university college for the colony. Among the first appointments to the staff of the College was a Professor of Law.

The Natal University College

On 11 December 1909 the governor of Natal assented to the University College Bill (Act 18 of 1909) bringing into existence the Natal University College. The premises of the college consisted of a two room wood-and-iron structure located in the grounds of what is now the famous Maritzburg College School. The structure would later become part of the laundry of the school. Among the eight professors who were the original staff of...
the new university was Robert Inchbold, appointed to the chair of law.

Aged 30, Inchbold, who was born in the United Kingdom, came to the Cape where he obtained the degrees BA LLB (1905) at the University of the Cape of Good Hope. A quiet, studious man, the new professor of law devoted his energy to preparing candidates for the Natal Law Certificate. The curriculum for the certificate included the elements of Roman law, Roman-Dutch law, English law and Natal statute law and extended over two years of part time study.

Classes were held in a room on the first floor of the grandiose Pietermaritzburg City Hall. When, in 1912, the rest of the College moved to a new building in the suburb of Scottsville, lectures in law continued to be delivered in town. Although the College was not established in Durban, Inchbold was required to provide lectures there in the Town Hall to aspiring lawyers.

Initially, the College had only a few law students, almost all of whom were candidate attorneys, or government servants. In 1911 there were 16 in Pietermaritzburg and 15 in Durban. From 1912 to 1916 only nine obtained the Natal Law Certificate. One was Edgar S Henochsberg, later a judge of the Natal Provincial Division. Another was Denis Gem Shepstone, who obtained the certificate in 1912, and became Administrator of Natal and Chancellor of the University of Natal.

Inchbold’s tenure ended prematurely and tragically in 1916 when, at the age of 37 years, he died of enteric fever.

BETWEEN THE WARS 1916-1945

In the year Inchbold died, the Natal University College underwent a significant transformation. It became one of the constituent colleges of the University of South Africa, which was established under Act 12 of 1916.

A Pietermaritzburg attorney, Edmund Adolphe Selke, BA (Oxon) and member of the Inner Temple, was appointed in Inchbold’s place, although only as a temporary lecturer. He remained in this position until 1922, lecturing to Natal Law Certificate students. He later became a judge of the Natal Provincial Division.

In 1919 Selke recommended that the College should provide tuition for the LLB degree. This proposal followed the establishment of a de facto Bar in Natal under the leadership of the great HG Mackeurtan. Selke, who was a member of the group of attorneys who would form the nucleus of this Bar, recommended that an additional lecturer should be appointed to provide lectures for candidates for the law degree. The NUC adopted this recommendation. In February 1920 Frank Bruce Burchell was appointed as lecturer in law to offer lectures for the LLB degree.

FRANK BURCHELL

Burchell (always known as “Binkie”) was born in Pietermaritzburg in 1882 and educated at Maritzburg College. After obtaining the BA and LLB degrees at Cambridge University, he returned to Pietermaritzburg and commenced a dual practice in 1907. While in practice he began to coach civil servants in preparation for examinations in law. This experience and his obvious talent as a teacher of law led to his appointment as a lecturer in 1920, which, since he was allowed to continue his practice as an attorney, was “more or less part-time”. However, when Selke gave up his position in 1922, Burchell’s appointment was made full-time and he became responsible also for the instruction of the Natal Law Certificate candidates. He continued his private law teaching, now of public servants and of candidate attorneys through correspondence courses. During each November in Pietermaritzburg, he would conduct intensive “brush-up” courses for these students who came from all over, to be subjected to Burchell’s jovial discipline. In August 1923 he was appointed professor of law, filling the post vacated by Inchbold seven years earlier. In accepting this appointment, Burchell, although he could not have known it, initiated an extraordinary dynasty which would see both his son and grandson following him as professors of law at the University of Natal and as Deans of the Faculty of Law.

Up until Burchell’s assumption of office, the College had not offered instruction for the LLB degree. Burchell introduced a curriculum for this degree in 1921. A university degree was a prerequisite for acceptance into the curriculum, which extended over three years (the Preliminary Year, The Intermediate Year and the Final Year). Candidates were required to complete 12 subjects. Candidates who included Roman Law and three other law subjects in their primary degree were exempted from the preliminary years of study and could thus complete the LLB in two years.

The degree was awarded for the first time in 1922 (when two graduates were capped).

At this time also attorneys who had qualified by obtaining the Natal Law Certificate began to seek to qualify as advocates by completing the Natal Advocates’ Examination. This route to qualification had the advantage over the LLB that the candidate did not have to have a degree in order to be enrolled for the examination. However, the examinations for the qualification were those set for the LLB degree. The first successful candidates passed the examination in 1923.

The Natal Law Certificate continued to be offered, and enrolments increased steadily, 30 candidates obtaining the Certificate between 1920 and 1926.

The study of law in the College, at this time, was almost entirely on a part-time basis, only a few LLB students enrolling full-time and then usually only for the Intermediate Year. The Law Department, including the law library—a few volumes placed on an ordinary bookcase—was housed in a room in Greene’s Chambers which was located in one of the picturesque lanes in the centre of Pietermaritzburg.

In 1925 Burchell became the Dean of the Faculty of Law of the University of South Africa. He carried an enormous workload. Besides lecturing in Pietermaritzburg in all of the prescribed subjects, he was required to lecture to law students in Durban. Once every fortnight he travelled to Durban where he spent two or three days lecturing. Only in 1926 was this load eased when a full-time lecturer was appointed in Durban.
THE BEGINNINGS OF THE FACULTY IN DURBAN

George Maurice Jex Sweeney was born in Pietermaritzburg in 1900, and like Burchell, had attended Maritzburg College. He obtained a BA degree in 1920 and an LLB in 1923 from Natal University College, studying under Burchell. After completing articles of clerkship in Pietermaritzburg he was admitted as an attorney in 1924, and then moved to Durban and practised with a firm of attorneys until the end of 1926. Known as “Maurice”, Sweeney was a man of many parts. He was a well-known mountaineer who was responsible for mapping several parts of the Drakensberg Mountains never mapped before, and for which he was awarded a gold medal by the Mountain Club of South Africa.

Sweeney was faced with the daunting task of establishing a viable centre for the Law Faculty in Durban. He was given very poor facilities: In its early years the whole of the Department of Law was housed in one room over the garage of Temple Chambers in Masonic Grove. To assist him in developing an appropriate library, the NUC Library in Pietermaritzburg sent him seven books: four volumes of Maasdorp’s Institutes of South African Law, Sanders’ Institutes of Justinian and two works on African Law. Sweeney’s first class met in 1927 and comprised 15 students (mainly Natal Law Certificate students), who sat around a converted table-tennis table in the room in the Masonic Grove building (now a national monument). Among the first candidates to obtain their LLB under Sweeney, in 1931, was George Neville Holmes, subsequently Holmes JA.

Conscientious and hard-working, Sweeney, like Burchell, was an excellent lecturer who virtually single-handedly created what became the Department of Law in Durban. Sweeney’s integrity and dedication to his students were legendary and a hallmark of his long career as a law teacher. He was renowned for his thorough preparation, phenomenal knowledge of case law and the delightful manner in which he presented his lectures, whether teaching elementary legal principles to first-year students or complicated aspects of the law to senior students. From the time of his appointment in 1927 until 1946 he was solely responsible for all the organisation and teaching in the Durban Department of Law. During this period he taught all the law courses for B Comm, LLB and Natal Law Certificate students, except Civil and Criminal Procedure. Sweeney was promoted to Senior Lecturer in 1940, Associate Professor in 1946 and to full Professor in 1949.

He went on to become Dean of the Faculty of Law during the years 1949-1954 and 1958-1959 and on his retirement in 1960 was still reputed to be lecturing 18 hours a week. By 1960 Sweeney had taught continuously for 33 years without leave and without being entirely free from responsibility for the Durban Law Department. After his retirement he spent a year travelling before he returned to assist the Department as a temporary lecturer in 1962. Thereafter, he was acting Head of the Department in the Durban Centre in 1963, and again from 1968-1969. He finally retired in 1977, and in recognition of his long service to the Faculty and the University, he was awarded the degree of Doctor of Laws, honoris causa, in 1978.

THE ERA OF GROWTH (1927-1939)

The number of law students in the College continued to grow. Between 1927 and 1934, 20 students obtained the LLB degree and 38 the Natal Law Certificate. In 1935, Burchell had received some relief from the heavy work load by the creation of an additional post in Pietermaritzburg, to which was appointed WGM (Bill) Seymour.

The outbreak of the Second World War saw a reduction in the number of students enrolling to study law. The relief this brought to the over-worked lecturers was, however, only slight. In 1946 Sweeney was rewarded for his faithful service by being promoted as associate professor, and a new lecturership was created for his department. Lieutenant Colonel G Wynne (later Wynne J) was appointed as Sweeney’s assistant in Durban where he remained until 1947. In 1948 AV Lansdown became a lecturer in the Durban Department. Lansdown, the son of the famous South African judge, had taught for some twenty years at the University of Pretoria and the Pretoria Technical College. He remained in Durban until 1954. Colin Turpin then joined the staff, leaving at the end of 1960 to take up a post at Cambridge University.

After the war, student numbers increased, especially in the Durban centre, where, by 1947, some 258 students were registered for degrees or certificates. In Pietermaritzburg, there were some 121 students. They were taught on a part-time basis in accommodation in the centre of the two cities. The curriculum called for 30 lecturing hours per week and Burchell and Sweeney in their respective centres provided 27 of these. Library facilities were derisory and the students had to be provided with typed notes. Since they had no secretarial assistance, each man had to type his own notes, or pay to have this done.

Until the end of 1951 examinations were set in both centres, and by 1954 the lecturers set their examinations jointly. In 1951 the departments in both centres rejected a move to transfer the Law School from Pietermaritzburg to Durban.

HAIL AND FAREWELL: R G MCKERRON

In 1947, the chair of law held by Burchell was named the James Scott Wylie Chair of Law (the widow of Colonel JS Wylie having donated £10 000 to endow the chair). Burchell was now 65 years of age and proposed to retire at the end of the year. Efforts to fill the chair were frustrated by the absence of suitable applicants (an exception was the application of one JC de Wet, who however, subsequently withdrew his application). But in 1948 Robert Gordon McKerron, sometime Dean of the Faculty of Law at the University of the Witwatersrand, and currently a member of the Johannesburg Bar, was offered the post and accepted appointment.

McKerron took up his chair in February 1949, at a time which seemed propi-
tious. Only a few weeks later, on 15 March 1949, the Natal University College was constituted as the University of Natal. The principal of the new university was EG Malherbe, the well-known educationalist, and its Chancellor was a graduate of the Law department, DG Shepstone, the Administrator of Natal. However, McKerron, dismayed by the conditions in the law faculty, and the teaching load he faced, decided, after only a few weeks in office, that the University had “made a mistake in offering me the James Scott Wylie Chair of Law, and I on my part made a mistake in accepting the offer”. He tendered his resignation and relinquished the post in April, returning to practise in Johannesburg.

The task of steering the new Faculty of Law of the new university into the future reverted back to Burchell and Sweeney. Sweeney was appointed Dean in 1949, a position he filled until 1954, and Burchell, now in his 67th year, soldiered on as the temporary incumbent of the James Scott Wylie Chair. Their task was made somewhat less arduous by the assistance provided by various part-time lecturers (among whose number was, in Pietermaritzburg, the future judge of the Natal Provincial Division, Douglas Shearer, and, in Durban, Duchesne Grice).

**EXTON BURCHELL**

After McKerron’s resignation, various attempts were made to fill the James Scott Wylie Chair but without any success until 1954. In that year Burchell, now 71 years old, indicated that he could not continue to shoulder the heavy lecturing load he had borne for so long and wished to retire. Once again the University sought a successor. This time it found one, in the person of Burchell’s own son, Exton Burchell.

Exton Mabutt Burchell was born in Pietermaritzburg in 1917. He took a BA degree at NUC in 1937 and then, awarded the Elsie Ballot Scholarship, proceeded to Cambridge University where he completed the Law Tripos in 1939. In the same year he volunteered for service in Natal carbineers and served in Abyssinia, Egypt and Italy, attaining the rank of captain. After the war he studied, under his father, for the LLB degree at NUC, graduating with distinction in 1946. He was appointed a lecturer in law at the University of Witwatersrand where, in 1948, at the age of 30 years, he was promoted to the post of professor.

In 1953 he received an invitation from the Principal of the University of Natal to apply for the post from which his father was about to retire. Burchell accepted, and was appointed the James Scott Wylie Professor of Law at the University of Natal, Pietermaritzburg.

On 1 February 1954, he took up his appointment, a position he would hold for 28 years, until his untimely death in 1982, a few weeks short of his 65th birthday.

The Department of Law (as the Faculty tended to be known in each centre of the University) which Burchell came to head may well have induced in him the same sort of dismay as afflicted McKerron. It consisted of two full-time members of staff – himself and Bill Seymour – who had resumed his lecturership after service in the war during which time he was taken prisoner and spent time in a German prisoner-of-war camp. The library could only be described as primitive. The department in both Durban and Pietermaritzburg occupied rented rooms in the city centre where teaching was conducted part-time.

If he was dismayed, Burchell was not disheartened. He began to put things right. Money was obtained to purchase a library of law reports and for subscriptions to journals and additional full-time lecturership posts were established in 1958/59. Student numbers in both centres began to increase significantly. During the next decade the steady increase to 1958/59. Student numbers in both centres began to increase significantly. During the next decade the steady increase in the number of full-time students studying for the LLB degree began to generate a demand for the law departments to orientate their timetable and ethos away from part-time teaching and to become more part of the greater university, offering lectures on the campus of the university and during the traditional hours for instruction. Reluctant to abandon the long tradition of catering for the interests of part-time students, the Faculty nevertheless felt compelled to heed these pressures.

An initial step was to locate its departments on the main campus. In Pietermaritzburg this came about when the University acquired what was the old municipal golf course and decided to erect buildings there for the faculties of Law and Commerce. A separate building – of modernistic architectural design – was constructed for the Law Department containing not only office accommodation but also a purpose-designed Moot Court room and a fully equipped library. In Durban, the Department moved from its premises in City Buildings to the Memorial Tower Building and, later to the fine art deco Howard College Building which it occupies today. This building was remodelled so as to contain the Law Library and a Moot Court room.

Exton Burchell would be remembered by his many students as a great teacher of law. He spoke in a clear, calm, deliberate way, in language so lucid and direct as to make it impossible not to understand and comprehend. But if he continued the tradition of inspired teaching laid down by his father, he brought to the law faculty of the University of Natal a new dimension: that of high legal scholarship. A natural scholar, Burchell’s intellectual skills had been honed while at Wits under the tutelage of the formidable Bobby Hahlo. At the University of Natal he began to lay the foundations of a tradition of research and publishing that would shape and influence generations of scholars. The research impetus provided by Burchell’s appointment gained momentum with the appointment of two outstanding young academic lawyers to the full-time academic staff: Tony Mathews (in 1959) and Peter Hunt (in 1964). Mathews, in 1964, was appointed to the professorship in Durban, vacated on the retirement of Sweeney. John Milton was appointed, in 1965, to the lectureship Mathews vacated in Pietermaritzburg.

By then Burchell and Hunt had commenced the collaboration that would produce the famous series of volumes on South African criminal law, _South African Criminal Law and Procedure_.

Peter Michael Arthur Hunt was a graduate of the Pietermaritzburg Law department, remembered as the best student that had studied there. After completing the LLB he spent two years over-
Antony Stuart Mathews was born in Pretoria in 1930. There he completed articles of clerkship and was admitted as an attorney. While practising, he studied for the BA degree through Unisa. In 1955 he moved to Pietermaritzburg where he completed the BA and the LLB degrees. He was appointed a lecturer in the Department of Law in Pietermaritzburg in 1959. In 1961 he was appointed senior lecturer and in January 1965 he took up Sweeney’s chair in the Durban Department.

He remained in the Durban centre for almost twenty years. During this time he established his reputation as one of the first and foremost civil rights lawyers of his generation, publishing his highly respected works Law Order and Liberty in South Africa and The Darker Reaches of Government.

The Department which Mathews came to head in 1965, was small. The establishment of the Department of Law in Durban at this time comprised a professorship and four senior lectureships (the incumbents were A Kolczynski, E Shaw, MCJ Olnesdahl and DA Bester (later Mr Justice Bester)). Insistent demands for additional staff saw the creation, in 1970 of an additional professorship, to which was appointed Barend van Niekerk.

Barend van Dyk van Niekerk was born in Pietermaritzburg in 1939, and obtained the BA degree in 1959 and the LLB degree in 1962 at the University of Stellenbosch. He was a great traveller and a highly talented linguist. He was fluent in English, Afrikaans, French and German as well as at home in Italian and able to read Spanish. He held a number of international certificates and diplomas in foreign languages and obtained a Dr Hist from the University of Strassbourg (written in French).

Van Niekerk was an avid crusader for human rights and the need for a just legal system in South Africa and was born 20 years ahead of his time. He was a flamboyant speaker and prolific writer who fearlessly attacked the apartheid legal system. His speeches and academic articles included criticism of the Government, the judiciary, the legal profession, environmental pollution, the death sentence, racialism and racism and the treatment of prisoners. His writings and speeches tested the limits of freedom of speech in South Africa in the 1970s. His continuous crusades for social and legal reform made him highly unpopular in certain circles, and he was the subject of three reported cases which reflected the apartheid state’s tolerance for free speech and criticism by academics. In S v Van Niekerk 1970 (3) SA 655 (T) academics were cautioned against scholarly examination of the influence of race on sentencing; in S v Van Niekerk 1972 (3) SA 711 (A) the court indicated that certain calls for judicial action against unjust laws would not be tolerated; and, in South African Associated Newspapers Lid and Another (Van Niekerk) v Estate Pelser 1975 (4) SA 797(A) the court accepted the principle that a Cabinet Minister may sue, in his or her personal capacity, for defamatory statements made about the Cabinet. The principles in these three cases are likely to be subjected to close scrutiny under the Interim Constitution. Van Niekerk’s earthy, straight-forward and blunt approach concerning matters of human rights and civil liberties complemented the more tactful approach of Matthews, but both contributed towards creating a human rights ethos in the Faculty, which at times made it unpopular with the Government and certain members of the profession. The human rights tradition introduced by Matthews and Van Niekerk continued in the Faculty throughout the 1980s and still continues today. The Durban Department suffered a major blow when Van Niekerk died in June 1981 in a room in a small hotel in the remote village of Copacabana on the shores of Lake Titicaca in Bolivia. He was only 42 years old.

THE DEPARTMENTALISATION DEBATE

Since its inception the Faculty of Law of the University of Natal had had to contend with the awkward fact of being one faculty situated in two cities. One prob-

AS MATHEWS

After Sweeney’s retirement his Chair was vacant until the beginning of 1965 when Tony Mathews, who until then had been a senior lecturer in Pietermaritzburg, was appointed as the new professor and head of department in the Durban centre.

seas before taking up an appointment at the University of the Witwatersrand, where he obtained the LLM degree. He returned to Pietermaritzburg where, in 1966, at the age of 28 years he was appointed a professor of law. He remained in the department until 1971 when he took up practice at the Pietermaritzburg Bar. In 1975 he took Silk. On 11 January 1976 he was drowned while canoeing on the Msindusi River. He was only 38 years old.

While at Wits, Hunt had been offered the opportunity to produce a new edition of the well-known work on South African criminal law by Gardiner and Lansdown. He brought this project with him to Pietermaritzburg and proposed to Burchell, already well-known for his respected works The Departmentalisation of the Faculty of Law established his reputation as one of the first and foremost civil rights lawyers of his generation, publishing his highly respected works Law Order and Liberty in South Africa and The Darker Reaches of Government.

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A tribute by a prisoner

"Here was a zealous patriot, a true son of the soil, who, whatever his other faults, was determined to contribute, in his own way, to the thankless task of trying to find a solution to some of this country's complex problems. In a sense, therefore, his death is not a loss merely to the University of Natal - though you should feel it more than others - nor is it a loss only to the South African, and indeed, international legal fraternity; it is a loss, in a very pointed fashion, to the South African society which he sought to better because his conscience would not allow him to pretend all was well and good in the country he was born in and loved. It seems silly to say it, but I daresay that in... another one as Barend van Niekerk."

I should like to be able to love my country and still love justice - Camus

Problem was that of the deanship. In 1951 it was decided that the deanship should alternate between the two centres, a practice that, surprisingly, did not create any problems. Structurally, the faculty was made up of two "departments", identified not by subject but by geography. There was the Department of Law, Durban and the Department of Law, Pietermaritzburg. There was no formally appointed head of these departments, the professor in each centre being regarded as a de facto head. In 1968 it was proposed that the faculty should be "academically" departmentalised. The proposal was that in each centre there should be four departments of law. The proposal was approved but never implemented. Almost a decade later, the matter was again addressed. By now different views had emerged. The Durban centre favoured departmentalisation, proposing the creation of six departments. The Pietermaritzburg centre did not favour departmentalisation at all. In the end it was decided that the Durban centre would establish the four departments agreed to in 1968.

The Pietermaritzburg centre opted not to departmentalise. However, it did not wish to be known as "the department of law" a sobriquet which suggested it was a sort of fifth appendage to the Durban centre. It therefore motivated to be allowed to constitute itself as a "School of Law". Somewhat reluctantly the University agreed to this proposal, and on 1 January 1982, the "School of Law", Pietermaritzburg" was established. The structure of the School was relatively simple. It was headed by a "Director" who would perform the role of a head of department, and governed by a committee consisting of the members of the full-time academic staff. The essence of the school concept was that it did not force staff into academic pigeonholes and permitted staff to pursue research and teaching interests across the formal academic boundaries imposed by departmentalisation.

In Durban on the other hand, the Faculty was constituted as four departments (Public Law, Private Law, Commercial Law and Adjectival Law). For all this, the Faculty in Durban decided that although it was departmentalised, it would like to be styled as a "school of law". Located as it was in the Howard College Building, a graceful structure built in the elegant art deco style of the 1920s, the Faculty decided that it should be known as the Howard College School of Law.

For all these somewhat divergent internal structural arrangements, the Faculty continued to be a unitary institution with one dean and a single Board of the Faculty. This too, however, came under examination. With the continuing increase of the staff establishment in each centre, divergent views on matters of academic policy, curricula and approach were heard more and more often. It was decided that there should be a separation.

For reasons related to the University’s Private Act, there could not be two faculties of law in the university. It was thus decided in 1982, that the Board would establish executive sub-committees in each centre to perform the functions of the Board for that centre. There would, for the same legal reasons, be only one Dean, but there would be in the other centre a “deputy Dean” who would carry out the duties of a Dean for that centre.

With the passing of time these niceties of nomenclature and legality have become somewhat forgotten and the practice of the University is to regard the two Schools of Law as separate institutions each with its own "Dean" and Faculty Board. De facto each centre operates as an independent and autonomous...
HOWARD COLLEGE, DURBAN

institution. Each School has its own curriculum, syllabus and rules. The affairs of the Law Faculty in each centre is managed by a Faculty Board presided over by a Dean which makes decisions entirely independently of its counter-part in the other centre.

APARTEHID AND BLACK STUDENTS

A subject of concern for the Faculty over the years has been the provision of legal education for what used to be referred to as “non-European” students. In 1937 two Indian articled clerks applied to be enrolled as part-time students in the Durban department. Frank Burchell was prepared to accept them but found that the College authorities were not prepared to allow integration of “Black” and “European” students. Burchell and Sweeney were obliged to provide separate classes for the “non-Europeans”. This additional burden to their already enormous teaching loads was shouldered, but by 1942 the “considerable inconvenience” of the system led to its discontinuance. In 1946, however, black students were again accepted in Durban but only into certain BA law courses. In 1956, the demand for admission to the LLB degree from blacks had grown to the point where Sweeney agreed that black students be accepted

NATAL UNIVERSITY COLLEGE, PIETERMARITZBURG IN 1912
into these courses. This was a small breakthrough that led to the abandonment of the previous approach in so far as it was now accepted by the University Council that blacks should be allowed to proceed to the LLB degree. However, tuition continued to be provided on a segregated basis and in part-time hours. No sooner had the blacks been admitted than the government, through the Extension of Universities Act of 1959, prohibited the registration of blacks in the historically white universities, except with Ministerial permission. Blacks already enrolled were however permitted to continue attending the university. Ironically, black students now formed a significant proportion of the student body: in 1958 7.2% of the Faculty’s student body was black. By 1960 the percentage had almost doubled (13.4%) (in Durban almost one quarter of the students in the Faculty were black). During the 1970s, as a result of the education policies of the Government, the number of black students fell dramatically (in 1975 there were only seven black students in the Faculty). During the late 1970s, however, special courses were introduced which were not available at historically black universities, and consequently black students were able to apply for Ministerial permission to attend the University. As a result, by the 1980s the numbers of black students had increased again to approximately 20.6% in Durban and 12% in Pietermaritzburg.

In recent years the Faculty of Law has taken a progressive approach regarding student admissions with the result that, in Durban, at least 50% of the B Proc undergraduate law degree students are from disadvantaged communities, as is at least 20% of those in the post-graduate LLB law programme. Overall 72% of the 600 full-time law students in the Durban School in 1994 were students of colour. Although the Schools apply affirmative action programmes to cater for students from disadvantaged educational systems, the exit levels remain the same. This ensures that all graduates from the Faculty achieve the same requisite standards for the completion of the degree.

PIETERMARITZBURG
1980 to 1994

In January 1981 John Milton was appointed Dean of the Faculty. Following the practice of the time, he served for two years and then was appointed deputy Dean, becoming Dean again in 1985 for two years. Milton was also appointed as Director of the School of Law, Pietermaritzburg. He was succeeded as Dean by James Lund in 1988, continuing as Director until 1989, when he was succeeded in this position by Michael Lupton.

During the 1980s the staff establishment of the School of Law was enhanced. Two new professorial chairs were created. James Lund, a graduate and senior lecturer in the School, was appointed to one. Michael Blackman, a graduate of UCT and Harvard, who had joined the staff in 1971, was appointed to the other.

In 1982, Exton Burchell a few months short of his retirement died suddenly. His chair was filled by Lawrence Baxter, a graduate of the School of Law who, after completing the LLB, studied at Cambridge before returning to Pietermaritzburg where he was appointed as a lecturer. On the death of Burchell, Baxter was appointed to the vacant professorship. Baxter's relatively short tenure (he resigned in 1986 to take up a chair at Duke University Law School in North Carolina) was marked by the publication of his ground-breaking work Administrative Law.

In 1983 Tony Mathews transferred from Durban to Pietermaritzburg to an ad hominem professorship. As senior professor in the Faculty, he became, in 1982, the incumbent of the James Scott Wylie Chair. Mathews’s particular contribution to the School during this time was to bring about the establishment of the Centre for Criminal Justice, which was housed in the School and of which he became the acting Director. Under his guidance the Centre involved itself in applied research particularly in the field of policing in the country. A number of highly successful international conferences were held by the Centre which soon gained a reputation for its work as a leading institution of applied research. He died in 1993, soon after receiving the degree of Doctor of Laws (honoris causa) from Wits University.

On the resignation of Baxter, the vacant professorship, once held by Exton Burchell, was filled by none other than his son, Jonathan Burchell. Jonathan was born in Pietermaritzburg. Following with remarkable exactness the footsteps of his father, Burchell obtained the LLB (with distinction) in the School of Law Pietermaritzburg, was awarded the Elsie Ballot Scholarship and proceeded to Cambridge. On his return, he was appointed to a lecturing post in the Faculty of Law of the University of the Witwatersrand, where he was promoted to a professorship at the age of 30 years. And now, as his father had done, he resigned his post to take up a professorship in the School of Law, Pietermaritzburg. And, in April 1993, he completed this remarkable reprise of history, by being appointed Dean of the Faculty of Law.

Today the School has a permanent staff establishment of 15 members. The professors are John Milton (who, as senior professor in the Faculty, holds the James Scott Wylie Chair and teaches Criminal Law and Environmental Law), James Lund (who teaches Roman Law and Legal Method), Jonathan Burchell (who is the Dean and teaches Delict), Michael Lupton (who teaches Persons, Succession and Medical Jurisprudence),
Rob Sharrock (Contract, Insolvency) and (from 1994) Nic Olivier (Property). The Associate Professors are Bob Williams (Company Law, Income Tax Law) and Michael Cowling (Criminal Procedure, Public International Law, Environmental Law, Human Rights). Kevin Mitchell, a practising accountant who has taught in the Postgraduate Diploma in Taxation, is an Honorary Associate Professor. Senior Lecturers are: Bruce Dalling (Legal Aid); P-J Schwikkard (Evidence, Gender Law); Brenda Grant (Labour Law, Human Rights Law, Gender Law); Michael Kidd (Environmental Law, Jurisprudence); Mathew Francis (Administrative Law, Sale). Lecturers are Lorraine Hebbelthwaite (Commercial Law and Medical Jurisprudence) and SaraJagwanth (Constitutional Law).

DURBAN 1980 to 1994

During the 1960s, 1970s and 1980s the Department in Durban continued to grow, and a number of new professorships were created in accordance with the Faculty’s commitment to departmentalisation in Durban. In 1980 Chairs in Adjectival and Clinical Law and Commercial Law were created and filled respectively by David McQuoid-Mason (who had previously been promoted to a professorship in 1979) and John McLennan, (who had lectured at the University of the Witwatersrand for many years). After Barend van Niekerk’s death in 1981 the Chair in Public Law was filled by Raymond Wacks (1983–1984), Lawrence Boullle (1985–1987) and George Devenish in 1990. Michael Olmesdahl was appointed Professor of Private Law in 1985, Hilton Staniland, Professor of Maritime Law and Director of the Institute of Maritime Law in 1989, Nico Steytler as an ad hominem Professor of Public Law (1990 – 1991), Michael Robertson as Professor and Director of the Centre for Socio-Legal Studies (1990 – 1992) and Alan Rycroft as Professor of Procedural and Clinical Law in 1992. Peter Glavovic was appointed as SAPPI Professor of Environmental Law in his capacity as Director of the Environmental Law Institute in 1993.

Tony Matthews had headed the Durban Department from 1965 and had become Head of the Department of Private Law when the Durban Centre departmentalised. Thereafter, he served several terms as Dean and Deputy Dean until 1983 when he decided to relocate to Pietermaritzburg. He was succeeded as Dean by David McQuoid-Mason, a graduate of the Pietermaritzburg School. In 1986 Lawrence Boullle succeeded McQuoid-Mason as Dean for the period 1986–1987. McQuoid-Mason was re-appointed as Dean, a post he has held to the present day.

At present the Howard College School of Law has a permanent staff establishment of 25 members. The members of staff in School are the following (with their specialties in brackets):

The Professors are George Devenish (Constitutional Law, Administrative Law, Interpretation of Statutes); Peter Glavovic (Environmental Law); John McLennan (Contract, Company Law); David McQuoid-Mason (Medical Law, Human Rights, Legal Aid); Michael Olmesdahl (Family Law, Criminal Law); Alan Rycroft (Labour Law, Alternate Dispute Resolution, Human Rights) and Hilton Staniland (Maritime Law).

The Associate Professors are Karthy Govender (Constitutional Litigation, Administrative Law); Isobel Konya (Negotiable Instruments, Lease, Banking Law) and Mandla Mchunu (Street Law, Labour Law, Alternate Dispute Resolution).

Senior Lecturers are Neil Boister (Criminal Law); Kevin Ferguson-Brown (Public International Law, Roman Law); Lesley Greenbaum (Commercial Law, Lease, Tax Law); Inthiran Moodley (Labour Law, Alternate Dispute Resolution, Commercial Law); Chris Schembri (Property, Delict, Intellectual Property Law); Lee Styn (Insolvency, Contract); Mark Thompson (Constitutional Law, Criminal Procedure, Jurisprudence) and Tanya Woker (Contract, Advertising Law).

Lecturers are Tammy Cohen (Contract, Commercial Law); Leah Gcabaše (Criminal Procedure, Indigenous Law, Gender Law, Roman Law); Bruce Hickman (Commercial Law); Fiona Humphries (Commercial Law, Tax Law); Ron Louw (Criminology, Legal Study Skills); Devina Naidoo (Property, Delict, Gender Law) and Neil van Dokkum (Family Law, Succession).

THE FACULTY IN RETROSPECT

Graduates

More than 20 graduates of the Faculty have become judges of the Supreme Court amongst whom are included: DG Fannin, GN Holmes, LR Caney, ES Henochsberg, BD Burme, N James, FR Shaw, AA Kennedy, JS Henning, AB Harcourt, B Friedman, JA Howard, B Law, RN Leon (who would later become the Chancellor of the University of Natal), JJ Kriek, B O’Linn, JNS Brislow, PC Combrinck, TH Madala (recently appointed to the Constitutional Court) E Leach, JM Hlophe and VEM Tshabalala. In addition, R Masson served on the Natal High Court and E Edmonds on the High Court of Kenya.

Other graduates, including M Imber and T McNally, have served as Attorneys-General for Natal.

The Faculty has also produced a number of prominent Senior Counsel, including D Gordon, PMA Hunt, BA Acker, AJ Chadwick, A Findlay, JE Hewitt, GG Lotz, M CJ Wallis (recently elected Chairman of the General Council of the Bar), L Skweyiya (the first African SC in the country), MD Southwood, AJ Dickson, C Hartzenberg, KGB Swain, MTK Moerane, N Singh, CJ Pammenter, CR Nicholson and JNM Poswa.

A number of prominent lawyers have been awarded Honorary Doctorates of Laws by the Faculty including President MR Mandela, Mr Justice JM Didcott, Mr Justice R Goldstone and the President of the Constitutional Court, Mr Justice A Chaskalson, Professor Ellison Kahn SC (himself an alumnus of the Faculty, having obtained the LLM and LLD degrees) and Professor CIR Dugard.

Research


POSTGRADUATE STUDIES

The Institutes of Maritime Law, Environmental Law and the Tax Advice Centre in Durban provide continuing legal education for the legal profession in the business world. The Durban School offers Masters programmes in Maritime Law, Trial Advocacy and Clinical Law, Environmental Law, Labour Studies and Constitutional Law and Litigation as well as Postgraduate diplomas in Maritime Law and Income Tax Law. In Pietermaritzburg a Masters degree in Environmental Law is offered as well as a Postgraduate Diploma in Taxation.

COMMUNITY SERVICE

In 1985 both schools in the Faculty assisted the Department of Justice with the setting up of Small Claims Courts in Pietermaritzburg and Durban, these being initially held in the Moot Court Rooms in the schools.

Since the early 1980s the Law Schools have hosted the annual Practical Training Courses for articled clerks on behalf of the Association of Law Societies. In Durban the early Black Lawyers Association's Trial Advocacy training programmes were hosted by the Howard College School. In Durban a School for Legal Practice was set up in 1994 as a joint venture between the Association of Law Societies and the Faculty to provide five month's intensive practical legal training for candidate attorneys.

The Law Schools serve the broader South African community in a number of different ways. The first community service project was the establishment, in Durban, in 1973 of a Legal Aid Clinic, which today is regarded as providing not only legal services to the indigent, but also one of the top Clinical Law programmes in the country. A Legal Aid Clinic was established in Pietermaritzburg in 1974.

In 1987 a Centre for Socio-Legal Studies was set up in the Howard College School to provide skills training for shop stewards and members of trade unions, as well as to develop a community law programme. The nucleus of the latter was the Street Law Programme established in 1986 as a pilot project with five Durban schools, funded by the Attorneys Fidelity Fund and sponsored by the Association of Law Societies. Since then, the programme has spread to 14 of South Africa's 21 law schools and has reached more than 500 secondary schools in the country on an annual basis. The programme, which is based on a series of Street Law books and Teacher's Manuals written by Professor McQuoid-Mason, includes education about law in general, Criminal Law and Juvenile Justice, Consumer Law, Family Law and Labour Law. Human Rights Law and Democracy Training are also taught in the Street Law Programme in conjunction with Lawyers for Human Rights. The School in Pietermaritzburg offers a variety of certificate courses for the benefit of non-lawyers: the fields covered are labour law, environmental law, company law and sports law. The Durban School offers a certificate in constitutional litigation.

Associated with the Durban School is the Community Law Centre which was established in 1989 and has set up a network of paralegal advice offices in the rural areas of KwaZulu-Natal. The Centre trains paralegal advice officers who are elected by their communities for training, attend courses in the Durban office and then return to their communities to render advice and assistance under the supervision of the Centre.

In Pietermaritzburg the Centre for Criminal Justice, established in 1991, has engaged in ongoing research into community policing and has joined hands with local communities and the police in seeking to facilitate better local policing. A Centre for Land, Regional and Development Law, under the directorship of Professor Nic Olivier, was established in 1995.

PROSPECT

The creative diversity of the Faculty of Law's two law schools has enabled them to make a unique contribution to legal education, legal research and professional training, while also providing service to the wider community. Both schools are positioned to respond to the future challenges of reconstruction and development in the legal profession and administration of justice in the country under a democratic government. The new challenge for the Faculty is to assist in the transformation of the administration of justice and the legal profession so that the expectations and demands of a new democratic society are properly and fully satisfied. The Faculty will make its contribution to this process.

SOURCES

The account of the Faculty of Law of the University of Natal provided above is based largely on PR Spiller's exhaustive "History of the Natal University Law Faculty" published in (1982/3) 3 Natal University Law Review 1ff; (1984) 3 Natal University Law Review 7ff; (1985) 1 Natal University Law and Society Review 1ff. We have also relied upon EH Brooke's 'History of the University of Natal' (1966) and Ellisip Kahn's delightful account given in a speech at a dinner celebrating the 80th anniversary of the founding of the Law Faculty in Pietermaritzburg on 19 October 1990.