

Teaching Legal Research Methodology to Undergraduate Law Students at a Historically Disadvantaged University

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ABSTRACT The abolition of the Apartheid system has brought about a huge quest and at the same time agitation for skills development in all major critical and scarce skills courses and endeavours in the South African educational system. The teaching and learning of legal research methodology is not an exception given the fact that most of the previously disadvantaged universities are stigmatised as 'teaching based universities' as opposed to 'research based universities.' Since 1994, there has been significant restructuring in higher education and this is an integral part of the changes required to overcome the legacy of apartheid division and inequalities. Against this backdrop, historically black law faculties have now introduced extensive research training into their course modules in order to enhance the legal writing skills of the students. This paper describes the teaching and learning of the Legal Research Methodology module by a lecturer to the undergraduate students. It also highlights and analyses the inherent problem of disseminating the pedagogy of research to the students and the interventions that were introduced to find solutions to the problem are now eventually producing good results whereby students are writing standard research reports/dissertations. It finally highlights various improvements needed in order to strengthen pedagogy and make the art of skill development in research sustainable

INTRODUCTION

The majority of law lecturers received their training at the universities to become professional legal practitioners, advocates, barristers, attorneys and solicitors but not lecturers (Ndulo 2001). After graduation, whosoever wishes or decides to become an academic can then venture into law teaching without having received any formal qualification in teaching. To carry out the teaching job, they will have to rely mainly on the training and skills received during the course of being trained to become a lawyer. However, in education, teaching is the profession of the lecturers and they have received training specifically to effectively teach and impart specific knowledge to students in particular subject areas (Elliot and Calderhead 1995). It is, however, important to point out that law lecturers do sometimes receive training in teaching and learning mainly through workshops organised by the universities. This might enable them to receive a postgraduate diploma in Higher Education which is recognised by the Department of Higher Education in South Africa. Some universities are now insisting that all academic staff should go through this programme in order to serve as a credential for their teaching and learning qualification. Similarly, in some universities, for academic staff to be promoted to the next level, this

certificate must form part of the bundle of evidence in the portfolio submitted for evaluation for promotion. The overall benefit of this is to enhance and strengthen the teaching and learning services delivered to the students. At the undergraduate level, the teaching task and responsibility of a law lecturer is to provide the students with a sound knowledge of different sources of law and competency in understanding the principles of laws for the purposes of capacitating them to apply what have been taught to real life, practical situations (Hill 1986). To discharge this teaching obligation, the lecturer must know the purposes of the teaching and what outcome is expected at the end of the day. To accomplish this, the lecturer is expected to design workable and effective teaching and learning methods to be used for the pedagogy (Moliterno 1996). Twinings (1967), in one of his works reflecting on the purposes and methods of teaching and learning, raised this salient question "*for what purposes should what be taught to whom by whom using what methods in what milieu with what resources?*" (Twinings 1967). With regards to teaching legal research methodology, the answer is not far-fetched; it is reflected through the mission and vision of the University of Limpopo which states as follows:

"A world-class African university, which responds to education, research and communi-

ty needs of our society through partnerships and knowledge generation, continuing the tradition of empowerment. To be a leading African university epitomising excellence and global competitiveness, addressing the needs of rural communities through innovative ideas” (University of Limpopo 2013).

The mission and vision of the university is reinforced by the establishment of the Centre of Excellence as a cross faculty academic structure which seeks to:

“promote quality learning and teaching, and to improve the graduate throughput rate of the university. CAE provides academic development and support to staff and students of the University of Limpopo. This support is meant to increase students’ chances of academic success so that the throughput rate of the university may increase. The belief is that the students and staff need not be left to face academic challenges and university life pressures alone. CAE envisages a time when the throughput rate of students at the university would be exponentially increased. The Centre is driven by the passion reflected in the university’s motto of “finding solutions for Africa. Given the relevant necessary and appropriate support, any registered student can graduate with ease, and within the minimum time. As such, the Centre is involved in equipping students through various structures, workshops and training opportunities that are geared to inculcate the acumen of excellence and the spirit of leadership” (University of Limpopo 2013).

The quotations above speak to the extent to which the university seeks to promote teaching and research and the various supportive structures available to the students and lecturers in order to achieve robust knowledge production in all teaching and learning situations.

Objective of the Study

The key objective of this paper is to describe how Legal Research Methodology is being taught at a historically disadvantaged university to previously disadvantaged undergraduate law students by showcasing the inherent challenges faced by the lecturer in disseminating teaching and the interventions introduced to improve research skills and to equip students to face their fears regarding research. Even though

various problems were encountered at the initial stage, as a result of intense teaching and learning, there has been a remarkable improvement in the culture of research and many students are now actively engaged not only in writing dissertations, but in writing for publications. This positively impacts on how they evaluate and consider issues during the course of their studies and in future job related responsibilities.

METHODOLOGY

This study used the descriptive research approach by presenting various experiences acquired during the course of teaching and learning in classes, activities and involvement in the teaching of classes and feedbacks from students during consultation periods (Black and Wiliam 1998). The study reviewed relevant previous studies and made use of the robust and contemporary insights of scholars in the field to analyse the pedagogy of legal research methods as being a useful tool for producing human capital with profound knowledge and professional ethics for serving the country (Cullen et al. 2002). Considering that transformation is still on-going in the educational system in South Africa, this paper could be significant and beneficial for researchers, academics, and policymakers to understand more deeply what is needed to improve the teaching and learning of legal research methodology at an historical black law school in order to reform its system for the benefit of educational quality and student academic success (Arnove et al. 2012).

Motivation and Significance

This work is significant because it will be beneficial to lecturers who are having difficulty in teaching legal research methodology as it provides a number of insights into how to face challenges and turn them around into opportunities; it will be beneficial to students because they will learn useful examples from this descriptive work and be confident that with hard work, they can become very skilful in legal research whether as an academic or as legal practitioner.

With regard to those students who want to pursue postgraduate studies, legal research methodology is essential because it will show that the student has been exposed to and taught the skill of undertaking and writing up research

at the undergraduate level which will serve as a useful acquired knowledge and experience at the post graduate level (Trujillo 2007). The reason why this is emphasised is that at the University of Limpopo's School of Law, the Legal Research Methodology (RREP 411) course which will lead to the writing of a research report dissertation is an elective course and is not compulsory for all final year students. This is a major deficiency in the curriculum of undergraduate law students at the School. It is therefore strongly motivated that this course be made compulsory given the overall benefit to students at the School and after graduating. The students are given the option in their final year to choose either Legal Research Methodology or the Practical Legal Course (PRLC 411 and 412). The Practical Legal Course provides an introduction to and teaches students about how to practice law when they start working as legal practitioners. The argument for making the Legal Research Methodology course compulsory is that this will make students more efficient, skilful and effective in the practice of law. Nowadays, a lot of research and writing skills are needed to prepare briefs and pleadings to be filed in court. Consequently, a good lawyer needs to acquire skills in research and writing in order to engage thoroughly and robustly with issues during practice. Both courses are therefore mutually inclusive and beneficial.

Literature Review

There has been significant implementation of reforms to law education in South Africa since the country's transition to a constitutional democracy in 1994 (Fölscher and Cole 2006). However, the remnants of previous inequalities continue to linger replicating a cycle of disadvantages (Lesley 2009) that is reflected in the turning out of poor quality LLB graduates as a result of the deficiency in teaching and learning. The complaints from law firms in South Africa, law courts and clients about the poor performance of the recently graduated law students bear testimony to this (Stevelman 2008). One of the major reasons for the poor performance is the poor teaching of legal research methodology to the undergraduate students during the course of their studies. This disadvantages them as they are not able to engage in and embark on robust legal research and the evaluation of legal princi-

ples in order to apply these to solve legal problems (Courchesne 2005). Against the backdrop of this problem, most of the law schools have now intensified their efforts in the teaching and learning of legal research methodology to the undergraduate law students in order to equip them to face various challenges when they start working as lawyers (Hill 1986). While teaching and learning of legal research methodology is very desirable and necessary, it becomes more rewarding and adds more value when it is taught by a lecturer who himself is a researcher and has been tested by his peers in the field (Barnes et al. 1994). This is very important in the dissemination of research pedagogy to the students.

Currently, in South Africa, the contemporary issue on the lips of all previously disadvantaged people is 'transformation' (Kola and Selesho 2012). Transformation in South Africa cuts across all landscapes be it social, economic, political or, more importantly education. Government is set to achieve transformation in all aspects of life with the resources available. Education is not an exception. Against this backdrop, The White Paper on Higher Education Transformation and the Higher Education Act, No. 101 of 1997 has laid a solid foundation for what is to be done in order to face the challenges and reach the transformation goals. Scholarly literature has confirmed that the historically disadvantaged people were isolated and denied various socio-economic rights and amenities including standard education. With regards to education, inequality will be a thing of the past if there is, according to Kola and Selesho (2012: 209) "efficiency and by increasing access for disadvantaged groups, and developing new curricula and flexible models of learning and teaching (including innovative models of delivery)."

There are different approaches to how legal research methodology can be taught to undergraduate law students. However, before teaching of the module commences, it is expected that learning guides be made available to the students (Allen 2007). The learning guide is the road map showing what learning path will be followed and how the course will be taught and the expected learning outcomes at the end of the study (Black et al. 2011). The learning guide will have to conform to and comply with the approved module content duly approved by the university. The essence of this is to give the students ample opportunity to acquaint them-

selves with the contents of what will be taught during the course of the lectures and also to be able to read ahead before each topic is taught (Svinicki and McKeachie 2011). Consequent upon this, the students are, from the inception, exposed to a variety of genre either via the teaching thereof or by their searching for and reading the material themselves. In law, relevant literature in whatever subject area is the prerequisite to understanding the principles and how to apply them (Pearce 1998). Therefore, law students are expected to cultivate and possess a library friendly attitude because that is where the tools of the trade are stocked (Seong-Hun 2012). In order to enable effective teaching and learning of legal research methodology, the law students are expected to read a vast amount of literature just as in any other academic subjects, modules and courses (Mary-Rose 2011). What is important is for the student to be part of the learning community where goals are set and all the members of the learning community work very hard to realise the goals, irrespective of challenges (Jackson et al. 2006).

Chireshe (2012) observed that the reason why students go to school is not only to acquire just any type of education but a better education that will prepare them for the future challenges anywhere they find themselves in order for them to have a better future. In law, the pedagogy of legal research methodology will definitely prepare the students for future legal challenges in any job in which they might find themselves. They will be able to analyse, examine, apply principles and concepts of law in order to solve clients' problems whether in court or outside the court. Toward this end, in order to achieve this, students should be guided very well by impressing upon them the need for hard work, dedication and focus. Chireshe (2012: 305) accentuates that providing career guidance and counselling services to students will enable them to "acquire the skills they need to make choices and decisions about their future." This is what the author has been doing to stimulate interest in legal research methodology which will be one of the major tools for career success in life. Practical examples are cited of successful lawyers, attorneys, advocates and academics that have used the knowledge acquired in the university by applying it to their work which, in turn, has translated into huge success. The students are

usually enjoined to emulate this approach but with a warning that they will only be as successful as those cited in the examples provided they work very hard. Van Wyk (2012), one of the leading and prolific writers in South Africa, indicates that education offers numerous promises beyond one's contemplation. It improves one's professional proficiency and it is a catalyst for personal growth and success in any endeavour and very sustainable in all contexts.

The study conducted by Watson and Klaaren (2002) provided new insight into the ability of a law student to understand law principles and legal concepts better when required to convey these to another person through speech. In essence, through oral presentation, the student is able to persuade the listeners, probably during moot court trials (Watson and Klaaren 2002). However, the same student was found wanting in all her written examinations as she performed poorly. This raises a major concern because no matter how good a student is, the yardstick for measuring whether she is a brilliant student is through written assessments such as tests and examinations. Whatever is learnt can then be applied to real life situations orally or in writing (Watson and Klaaren 2002).

We should not lose sight of the issues of inequalities, generally and in particular, regarding Black learners from socio-economically and academically disadvantaged communities (Page et al. 2005). In these communities, the learning and teaching environment for learners is appalling. There is an absolute inadequate infrastructure, inadequate text books, there are no libraries and laboratory facilities and, in most cases, the rural learners cannot access internet services and are hence deprived of contemporary information. The quality of education generally is very poor (Mammen 2012). Against this backdrop, Kagee et al. (1997) observed that due to the gross inequality in resource provision at primary and secondary school levels, students from the disadvantaged communities are underprepared for the demands of tertiary education.

In their study, Matoti and Shumba (2012) provided insight into the problem of the quality of students' writing performance in tertiary institutions. Their findings echo the problem and concerns being faced by this author in the university in which he teaches Legal Research Methodology. One of the concerns is the lack of preparation and another is the quality of educa-

tion that has been acquired which becomes evident during the transition of students from high school to tertiary education. The majority of the students from the high schools lack the ability to write logically and coherently. Most of the writing at universities is discipline specific (Cabral 2008) and the students are expected to know the terminologies and the concepts in various subjects. Take for example in law, the students are expected to be well-grounded in English grammar and have the ability to interpret, apply principles of laws, understand and apply numerous concepts in law, evaluate knowledge and be able to develop an argument, to be critical, to process information, to use the correct terminology, to follow a logical order, and to make references (Hartley 2002). The majority of the students lack these attributes and this contributes to the slow pace of teaching and learning (Matoti and Shumba 2012). In South Africa the through-put rate is so important that a lecturer is expected to do everything with regard to teaching approach and responsibilities to ensure that the majority of the students are given all necessary assistance to enable them to pass the course.

During the course of the literature review, the study discovered that even though, generally, there is existing scholarly literature on teaching legal research methodology to students at historically disadvantaged universities, there is none which specifically describes the experiences of a law lecturer teaching the pedagogy of legal research methodology in the School of Law at the University of Limpopo (Ladson-Billings 1999). This is a gap in the body of knowledge. It is against the backdrop of this gap that this study makes an inroad, based on the unique experience of the lecturer, by analysing descriptively the teaching and learning of legal research methodology to black undergraduates at the historically black university to not only improve understanding but also generate new knowledge (Banister 2011).

Challenges Encountered

According to Boyle and Dunn (1989: 213), “teaching can be rewarding, it can also be frustrating when some students fail to grasp the knowledge being imparted.” With respect to the latter, it is important from the outset to point out and appreciate the fact that English which is being used for learning and teaching is not the

mother tongue of the law students at the historically disadvantaged universities (Kinloch 2005). Despite the Constitution of South Africa recognising eleven official languages, the majority of the courses in the historically disadvantaged universities are still being taught in English. As a way out of the differences in languages and diversity, (Reynoso and Cory 2002) opting for English to become imperative in view of the fact that not only South African students are learners in the university setting, international students have also been admitted to study at the university. Adopting English as the language of teaching will therefore not be out of order and this is supported by the policies of the universities. Against the backdrop of the language disparities and inequalities, students entering university are therefore introduced to and taught the use of English for academic purpose since it will be used as the medium of communication and expression during the course of teaching and learning (Mendelowitz and Ferreira 2007). What has been discovered is that, despite the impressive teaching of English language to the students, most of them still struggle to read, write and communicate effectively in English which negatively impacts on their performances (Ferris and Hedgcock 2009). However, in order to become a successful legal practitioner, law students must be well grounded in the English language because this is what will be used throughout their career either as advocate, attorney, consultant or academic and so forth.

Linguistic Communication Proficiency Challenges and What Was Done to Address This

In South Africa, according to Ferreira and Mendelowitz (1986: 54), “English occupies a hegemonic position despite there being eleven official languages.” The problem is compounded when someone is referred to, according to Ferreira and Mendelowitz (1986: 55) “as a ‘second language English speaker’ which is frequently employed as code for labelling students who have deficient English language proficiency. Students frequently internalise this positioning.”

The demise of apartheid in 1994 paved the way for language planners under the democratic regime to correct the linguistic inequalities of the past (Aziakpono and Bekker 2010). In terms

of section 6(1-4) of the 1996 South African Constitution, eleven languages are duly recognised as official languages and the Constitution encourages the use of all of these languages in all domains (Aziakpono and Bekker 2010). The Bachelor of Law students at the University of Limpopo who take the course module Legal Research Methodology tend to come from diverse backgrounds in terms of language, culture, geographical location, class, and race and have different levels of preparedness and levels of proficiency in English. While the university respects the provision of section 6(1-4) of the constitution, it nevertheless adopts English Language as the sole medium of instruction when it comes to teaching and learning. In order to be admitted to the university, “students need to have matriculated with English as either a first (or home) language, or as a second (or first additional) language. The vast majority of students in South Africa do not have English as a home language (or mother tongue) and are therefore positioned as ‘second language speakers’ from the start” (Ferreira and Mendelowitz 1986: 55). Consequent upon this, at the University of Limpopo, all newly admitted year one law students must take a course called Legal Communications in which they will be taught legal skills and communication in preparing them to be able to understand and appreciate principles of law, legal concepts and legal writings, including a bit of research. During the course of writing this paper, the lecturer who is responsible for teaching this course intimated on why students in their final year are not doing very well or writing good research reports despite the fact that they have been provided with the background and foundation in year one. She responded that the students merely learn and cram the topics taught in order to pass the examination. As a result of this, they are unable to apply subsequently what they have been taught when they get to year four and have to write a dissertation. She complained bitterly about her frustrations in class and also about the lack of proficiency in English. With this insight, it will continue to be a daunting task to provide teaching and learning for the students in view of this and the fact that Legal Communications as a subject is very important as a major background learning tool to lay a solid foundation for legal research methodology and other subjects.

To write a good research report, the student needs to be linguistically sound, but the problem is that the students’ writing skills are flawed. This puts them at a disadvantage when performing a critical appraisal, analysis, discussion, evaluation of their reading content and then when writing (Wong 2000). During the years of teaching and learning, some of the writing problems that have been identified include grammar, spelling, punctuation, expression and the ability to interpret, apply and evaluate facts in case law, apply the principles of law to find solutions to legal problems and engage, in writing, in a robust discussion of law.

Absolute Lack of Culture or Attitude to Reading and What Was Done to Address This

Wolff (2003) asserts that at the university, in pedagogy, the feedback and the experiences of students in the classroom, the laboratory and the library are the heart and soul of education. In order for viable, rewarding and beneficial transformation to occur in higher education, there should be a change in attitudes and mind-sets and a total departure from the notion that historically black universities and their students cannot undertake or engage in contemporary research work. Therefore, the university needs to employ lecturers who will promote and inculcate reading habits in the students (Wolff 2003). With regard to the students, majority believe in hand-outs, this is my sincere observation. They do not want to go the extra mile by spending hours in the library studying. They want to restrict themselves only to learning what has been taught for the purpose of passing the examinations. Every student wants high pass marks and does not care whether they have acquired knowledge that can be useful to them in future. This is a paradox and dilemma in pedagogic.

Given the above problem of a lack of a culture of reading, the researcher started to stimulate interest by enjoining and motivating the students to start reading relevant literature, comprising of journals, text books and legal instruments in the areas they chose to research and to summarise each reading and submit it to me. By doing this, the researcher started inculcating the culture of reading and comprehension in them. The feedback was very encouraging except for a few students who did not comply.

Entrenched Culture of Plagiarism and What Was Done to Address This

At the end of the teaching and learning of Legal Research Methodology, the next thing is for the student to put into practice what was taught by writing a research report mini-dissertation. This is how the student is examined and marks are awarded accordingly by the supervisors. The problem identified at this stage is that the majority of the students have been found not to put what was taught into practice. Rather, they usually lift materials from the internet or books word for word without paraphrasing. The worst aspect is that they find it very difficult to make attributions or acknowledge sources used. An alert supervisor will identify this and insist that the students should go back to do the right thing while some supervisors may overlook it. In order to prevent and reduce plagiarism, supervisors are required to submit the mini-dissertation to a second internal examiner. Also, the mini-dissertation is expected to be submitted for plagiarism checking and verification through the technology of "Turnitin" which is used to identify all plagiarised information in the work. The outcome of this is that the work will be confirmed as original or not.

Introduction of Cooperative Learning

During the course of the teaching and learning, it was noticed that while some students were making headway, others were lagging behind. In order to engage the whole class and for all students to learn and be able to write effectively without leaving anybody behind, the lecturer introduced cooperative learning methods. The idea of this teaching technique was derived from the findings of the study done by Ripps and Stephen (1986: 457) where they provided this insight "research indicates that cooperative learning methods have a positive effect on a wide range of attitudes and possibly on student's achievement. Broadly defined, *cooperative learning programmes allow students to work together in small heterogeneous groups where they are expected to help one another learn*" (Ripps and Stephen 1986). This approach has become very successful because it develops and sharpens the legal skills of the students and those who are slow at learning were able to catch up and also acquired the skills. The lectur-

er was very impressed with the level of commitment and the feedback from the students and other supervisors.

Suggestions for Improvement

For there to be an improvement in teaching and learning, the competent academic staff with requisite teaching and research skills should be deployed for efficient and effective delivery of pedagogic services. This will aid to achieve the mission and vision of the university which are excellence in teaching and research that will culminate in knowledge production and impact on students to enable them to face any challenge now and in future. Pursuant to this, if the teaching techniques being used for teaching and learning are producing the desired result, it is advisable that it should continue, but it should be reviewed from time to time in order to ensure that all learners are coping and benefiting. This is because it has been observed that while some students are doing well in their studies, others continued to perform poorly despite an environment conducive to learning (Boyle and Dunn 1989). At different universities and among legal scholars, there has been a continuous debate on how to improve the teaching and learning of legal research methodology and writing because of the importance of the programme to would-be-lawyers (Margit 1979). While the course is taught at entry level at some universities, at others it is taught at the second or third level. At the University of Limpopo, it is taught at the third level. The reason for this is to allow the students to develop a proper grasp of the principles of law and to be exposed to different modules consequent upon which they will be well informed and be able to choose a topic for their research report mini-dissertation.

CONCLUSION

Legal research methodology is not a course or subject to be taught to students in order for them to pass examinations only, it is a living subject which the students will continue to need as lawyers for the rest of their careers wherever they find themselves. This is the reason why it is very important for historically Black universities to make it a compulsory course for all undergraduate law students.

RECOMMENDATIONS

The notable characteristic of students enrolled in historically Black universities is that virtually all the students are Blacks with a scanty mixture of Coloureds and Indians. For reasons best known to them, whites do not enrol at Black universities. Even though application to any university is optional, it would be better if Whites start applying to Black universities in order to have diversity in the students' intake. This might serve as a stimulus for healthy competition and the Black learners can learn a great deal from their white classmates and vice versa. In essence, this will be a form of transformation. Transformation should not only reflect Blacks filling a certain percentage of the entries at White universities, but also include whites enrolling at Black universities. This will promote social cohesion and foster prosperous academic environments in which Black and White will learn together and possibly become partners when they eventually graduate and start working.

As at now, at the University of Limpopo, Legal Research Methodology is an elective subject, not compulsory. This is contrary to the Higher Education Policy which seeks to undo the injustice of the past by capacitating law students to be well grounded in research skills. This course can be taken side by side with the Practical Legal Course (PRLC). It will just require an amendment to the curriculum to accommodate the two modules.

In addition, most of the training on how to use academic resources at the library is usually geared toward postgraduate students; it is recommended that undergraduate students are to be trained also.

LIMITATIONS

This paper examines how teaching and learning of research methodology has been improved on in one of the historical disadvantaged universities hence the scope of study is limited to the university discussed. The situation may be different in other universities thus this presents an opportunity for further research into the burning issue of how best to provide teaching and learning of research methodology to law students.

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