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‘But, where is the halaal food?’¹ An appraisal of diversity teaching in clinical law programmes in South African clinics

Summary

South Africa is renowned for its racial, cultural, linguistic and ethnic diversity. Our new democratic dispensation further aims to affirm this diversity, both in terms of the values underlying the Constitution as well as in the various programmes, policies and practices found in the public domain. In the tertiary education context and in particular within the law degree, much of the responsibility of teaching diversity issues falls on law clinics because of their access to the broader community through client service and other outreach activities. To what extent are they succeeding? This article explores the extent to which issues of diversity have been integrated into our clinical education programmes; the types of issues which arise in the course of our clinical work, and the measures that are in place in order to meet the challenges. It is based on an empirical study of South African law clinics, conducted between April and June 2007. It provides statistics, highlights some key problems and concerns, and concludes with recommendations for the further and structured integration of diversity issues in clinical curricula.

“But, where is the halaal food?” ’n Waardebepaling van diversiteitsonderrig in kliniese regsprogramme (regsopleiding) in Suid-Afrikaanse klinieke (regsklinieke)

Suid-Afrika is bekend vir sy rasse, kulturele, linguistiese en etniese diversiteit. Ons nuwe demokratiese bedeling beoog ook om hierdie diversiteit te verseker beide in terme van die waardes onderliggend aan die Grondwet sowel as verskeie programme, beleidbepalings en praktyke wat in die openbare domein voorkom. In die konteks van tersiêre onderrig en meer spesifiek wat betref die regsgraad, kom die verantwoordelikheid vir die onderrig van diversiteit neer op regsklinieke as gevolg van hulle toegang tot die breër gemeenskap deur kliëntediens en ander uitreikprogramme. In watter mate slaag hulle in hierdie doel? Hierdie artikel ondersoek die omvang waarin kwessies met betrekking tot diversiteit in ons kliniese onderrigprogramme opgeneem is, die tipe aspekte wat na vore kom in die loop van ons werk in klinieke en die maatstawwe wat in plek is om die uitdagings te hanteer. Dit is gebaseer op ’n empiriese studie van Suid-Afrikaanse regsklinieke wat tussen April en Junie 2007 onderneem is. Dit stel statistiek beskikbaar, lig sleutelprobleme en besorgdhede uit en sluit af met aanbevelings om diversiteitskwessies verder en op ’n gestruktureerde wyse in die kliniese leerplanne te integreer.

1 The title of this paper is inspired by an anecdote shared by Frans Haupt of the University of Pretoria Law Clinic. He recounts the confusion and misunderstanding arising from cooking ‘halaal’ meat on the same grill as ‘non-halaal’ meat, during an orientation workshop. The results of this apparent *faux pas* are both hilarious and educational. ‘Halaal’ is the term ascribed to food that is permissible for consumption in accordance with Muslim dietary requirements.

1. Introduction

South Africa is renowned for its racial, cultural, linguistic and ethnic diversity. Our new democratic dispensation further aims to affirm this diversity, both in terms of the values underlying the Constitution² as well as in the various programmes, policies and practices found in the public domain.³ Our coat-of-arms proudly proclaims 'unity in diversity'.

Educational institutions have also grappled with these issues, and in the tertiary education context, various university courses and disciplines attempt to address diversity and multicultural education in their curricula.⁴ Within the law degree, much of this responsibility falls on law clinics because of their access to the broader community through client service and other outreach activities. While it is widely accepted that the diversity afforded by a multicultural environment is beneficial to both learners and teachers,⁵ to what extent are teachers in general, and clinicians in particular, embracing the notion of diversity, and empowering our graduates for practice in a diverse world?

This contribution explores the extent to which issues of diversity have been integrated into our clinical education programmes; the types of issues which arise in the course of our clinical work; and the measures that are in place in order to meet the challenges. The article is based on an empirical study of South African law clinics, conducted between April and June 2007.⁶ It provides statistics in relation to existing programmes, and highlights some key problems and concerns, as well as areas for possible expansion and exploration. The article proceeds to explore the significance of these results, and concludes with recommendations for the further and structured integration of diversity issues in clinical curricula.

The following sections illustrate the main findings of the study, together with commentary on the meaning and implications of these results.

2 *Constitution of the Republic of South Africa*, 1996.

3 These would include legislative provisions such as the *Employment Equity Act* and other labour laws; equality legislation; various affirmative action policies; state institutions such as the Commissions for Gender Equality, and for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

4 In addition to a large number of offerings which span the issues of race, language, religion, gender and culture, the Faculty of Humanities at the University of KwaZulu Natal, for example, also houses a School of Development Studies.

5 Vawda 2006:296.

6 A questionnaire covering a range of issues related to diversity teaching was administered to 19 law clinics. Fourteen of those responded, representing a response rate of 74%.

2. The study

2.1 The sample

As indicated, fourteen of the nineteen clinics canvassed responded to the questionnaire, representing a response rate of 74%. While this is a fairly representative sample and significant response rate, an important *caveat* needs to be noted. Of the 5 that did not respond, 3 (representing 60% of non-responses), are formerly historically-disadvantaged institutions which are rurally-based. This might reflect an urban bias in the study. Because of a history of neglect, many historically-disadvantaged institutions tended to lag behind in terms of the development of their clinical programmes.

2.2 Teaching component

Respondents were asked whether their clinical programmes included a teaching component.

Ninety-two percent (92%) reported that they did. This statistic highlights 2 important issues:

- (a) Clinics have evolved significantly since their inception over 30 years ago.
- (b) The most dramatic developments have taken place in the last decade, with the advent of democracy, and the adoption of the Constitution. Additionally, this also coincides with the concerted strategy by the AULAI and AULAI Trust⁷ to undertake capacity-building across the board and, in particular, within law clinics at historically-disadvantaged institutions.

2.3 Diversity/Multicultural component

They were further asked whether the programme included any discussion or instruction around issues of diversity or multiculturalism.

Seven clinics (50%) stated unequivocally that they included a diversity component in their programmes, while another three (21%) admitted to having a limited component. In the latter category, the reason furnished for this situation was the lack of time or space in the curriculum.

Four clinics (29%) did not have such a component. The reasons therefore are interesting. One stated that the curriculum was already exhaustive, and another that this issue did not arise because of a relatively homogenous student/staff/client population, alluding primarily to the race or ethnic factor. Two clinics did not have a diversity component because they did not see any need for it.

7 AULAI is the Association of University Legal Aid Institutions, a voluntary association representing the interests of law clinics nationally. The AULAI Trust is an independent legal trust incorporated specifically for the purpose of accessing and distributing funding to law clinics.

2.4 Preparedness to raise diversity issues

A further enquiry concerned the extent to which the various actors in the clinic context — students, supervisors and clients — appeared to be prepared to raise diversity issues during their interactions.

The highest level of preparedness appears to be among students (78%), followed by supervisors (76%). Client preparedness was recorded at 50%.

It must be noted that these figures represent the perceptions and assessment of the supervisors, or rather, the respondent to this study, usually the clinic director. Students and clients were not independently canvassed.

2.5 Common diversity issues raised

Respondents were asked as to what types of diversity issues arose in their interactions.

The most common issue was that of language (64%), followed by gender and race (each 42%), and ethnicity (35%). Class (14%), culture/religion (14%) and age (7%) also featured.

A number of respondents reported serious difficulties over the language issue, particularly when the interviewers and interviewees spoke different languages, and understood little or nothing of the others' language. This is particularly the case with the use of indigenous African languages. The issue continues to bedevil lawyer-client relations in the clinical context, a problem which is mitigated somewhat by the use of interpreters. One respondent also reported tensions between students in a predominantly Afrikaans-medium institution which was required to accommodate English speakers, a situation which could often assume racial undertones because of the distinct racial groups of the respective language speakers.

The identification of language as a major issue is understandable because much of legal work involves communication, both written and verbal. The use of multiple languages in clinical exchanges can complicate an already delicate balance involving supervisor, students and clients.⁸

2.6 Training in diversity issues⁹

Were the respondents the beneficiaries of any kind of training in these issues?

Six respondents (42%) reported having received some training. This training included both formal and informal training, much of it being AULAI-sponsored workshops and training programmes.

8 Vawda 2006:302.

9 There is a growing body of literature in South Africa on the topic of diversity training. See Fedler & Olckers 2001:57; Ball 2000:4; Carrim 1998:3; McQuoid-Mason 2002:107.

2.7 Need for training in diversity issues

Did respondents consider diversity to be necessary?

Ten respondents (71%) indicated the need for training in these areas. Having identified the need, clinicians clearly wish to be better equipped to undertake diversity teaching.

The respondents were also canvassed on the range of skills taught and the substantive law areas covered in clinical programmes. Strategies for the introduction of diversity teaching will have to be introduced across all these areas of teaching.

2.8 Common topics/skills taught in clinical curricula

The majority of clinics are teaching drafting (79%) and interviewing and counselling (71%). Approximately half the respondents also included ethics (57%), trial advocacy (50%), as well as aspects of file and practice management (57%).

Numeracy (36%), research (14%) and literacy (7%) also feature.

2.9 Substantive law areas

A large proportion of clinics are servicing clients in the area of matrimonial law (64%). Almost a third of them are also engaged in alternative dispute resolution (29%). Only one respondent reported being engaged in debt counselling, although this number is likely to be higher with the renewed recent interest in this field.¹⁰

3. Diversity

3.1 How diversity issues manifested

Respondents reported that issues of diversity and multiculturalism manifested in some of the following ways:

- (a) Frustrations and/or misunderstanding over language differences. A lack of understanding, or the inability to communicate, may lead to frustrations among participants, and misunderstanding of material issues.
- (b) Clients preferring to consult with advisors from their ‘own’ racial, ethnic or language group. Such requests were made invariably on the perception that an advisor who shared a similar background would understand the client better, communicate more effectively, and recommend options and remedies

¹⁰ The *National Credit Act*, 2005 became fully operational on 1 June 2007, and makes provision for, *inter alia*, the institution of debt counsellors. Clinicians have devised and implemented training programmes for debt counsellors, and are likely to become increasingly active in this area of work.

most appropriate to the client. A careful balance needs to be maintained between accommodating 'client comfort' and avoiding pandering to the client's prejudices.

- (c) Insensitivity to acknowledging diversity in the practice of law, for example, how to determine 'culturally-appropriate' remedies; issues of credibility of a client or witness; appreciation of dietary requirements of different religious groups. An example of such insensitivity would be the inappropriateness of proposing litigation strategies in a situation where the dominant relations are communal, and disputes are traditionally resolved through negotiation, mediation or other local variant.
- (d) Some racial incidents involving black students and white outside attorneys, as well as racial abuse of clients by debt collectors.

3.2 Cases highlighted

Among the more 'exotic' cases reported which forced clinics to focus on diversity issues were the following:

- (a) The claim to a tribal throne.
- (b) Refusal of a black male client to consult with a younger female student.
- (c) Lack of understanding of the seriousness of domestic violence issues, resulting in psychological problems, including feelings of de-sensitisation and guilt, when the particular client was killed.
- (d) Succession and inheritance in customary and polygamous situations.
- (e) Lack of understanding of religious dietary requirements.
- (f) Exclusion of a Rastafarian student with dreadlocks from school, which exclusion was successfully challenged in the High Court.

3.3 How were they dealt with?

Many of the issues raised were dealt with by respondents in the following ways:

- (a) Developing an understanding of, and respect for, the 'other'.
- (b) Accommodating the client's bias (in the case of objection to age).
- (c) Balancing discussion of 'difference' with appreciation of 'equality'.
- (d) Openly discussing differences, for example the dietary issue.

3.4 Suggestions by respondents

The most common suggestions in order to make diversity a more central feature of clinical legal educations were:

- (a) To make it a formal part of the course and curriculum.

- (b) To integrate diversity in all aspects of clinic (classroom, practice and course materials).
- (c) To conduct workshops drawing on experts, and focusing on understanding cultural and other differences; sensitivity training; and psychological counselling for advisors.
- (d) To develop authoritative and practical study material.

4. Conclusions from study

- (a) South African law clinics are well on their way to offering a comprehensive clinical legal education programme, which includes aspects of classroom teaching; practical work including representation of live clients, under supervision; and a variety of other ‘outreach’ activities which expose them to the harsh socio-economic realities faced by millions of their countrymen/women.
- (b) The skills taught in clinics are the basic competencies required in law practice: interviewing and counselling; drafting of documents and pleadings; aspects of file and practice management; basic legal ethics; and trial advocacy.
- (c) A large proportion of clinics offer services in matrimonial law (including divorces, maintenance claims and domestic violence matters). A notable absentee in the responses received is representation in criminal cases, indicative of the Legal Aid Board’s comprehensive, national coverage in this area.¹¹
- (d) Only half of the clinics canvassed included diversity issues in their programmes. The reasons for this appear to be manifold. While many cited the lack of time and space in the curriculum to accommodate these issues, it is also apparent that training in this area has, at best, been uneven, and many clinicians lack skills in curriculum design which would enable them to properly integrate diversity and multiculturalism as a central component of their work, and not as an afterthought.
- (e) While it is encouraging that three-quarters of clinicians indicated a willingness to raise diversity issues, it is disquieting that some do not perceive the need to do so.
- (f) The list of common diversity issues raised by clinics contains all the usual categories: language, race, gender, ethnicity. Of particular significance are situations which implicate multiple issues such as age, race and gender, for example, the client who refused to be interviewed by a younger, black, female student. It would be interesting to see what the response would have been had the young woman been white?
- (g) The manifestations of difference that were reported lent themselves, almost without exception, to interventions which could contribute to a greater

11 The state-funded, but independent, Legal Aid Board is now providing representation in some 358 883 cases per annum, 89% of which are criminal matters. See Legal Aid Board Annual Report 2006-2007: 22.

understanding of difference and appreciation of diversity. Clinicians appeared to respond, with varying degrees of skill, to this challenge.

- (h) The sample of cases highlighted by respondents demonstrates the richness of our diversity, which straddles modern and traditional worldviews and practices; the plethora of languages utilised within confined settings, raising possibilities for both understanding and misunderstanding; and the variety of cultural and religious practices which starkly demonstrate the potential for intolerance and offence.
- (i) A large proportion of respondents motivated for the need for training, and this will have to be addressed by the clinics and their representative organisations.
- (j) The key suggestions are to integrate diversity into the curriculum; to provide training workshops; and to encourage open discussion in the classroom and clinic.

5. A critical assessment of the diversity issues raised

While a fairly positive picture is emerging around engagement with diversity issues, it is not axiomatic that such issues are easily raised and dealt with. The difficulties inherent in confronting such politically-charged issues as 'race' are not to be underestimated. Despite our relatively open society, engagement with issues of race, ethnicity and culture is somewhat limited. Some writers suggest that the apparent dearth of academic engagement on issues of race in the South African context raises important questions, among them: 'why is such exploration so difficult in a place so centrally involved in 'race' as a category?'¹² Part of the reason, it is suggested, rests with the reluctance of different groups to re-visit painful experiences, and the desire to get on with their lives. In addition to conscious avoidance, this difficulty may also be proof of a lack of vocabulary and understanding — 'we simply don't know how to talk to each other.'¹³ Often people may prefer to remain 'colour blind', as avoidance of difficult issues is much more comfortable than confronting them. Racism can be 'invisible' to most people because it takes place out of their sight, or may unwittingly be their own.¹⁴ White asserts that '(t)his is a feature not only of racism and sexism ... but of cultural power more generally; it tends to be invisible to the person who exercises it.'¹⁵

The key, it is suggested, to dealing with differences is the employment of the 'principle of rendering visible'¹⁶ whereby the underlying assumptions, biases and beliefs of everyday activities (so often masked by denial or ignorance) are laid bare and exposed to closer scrutiny.

In the legal practice context, lawyers and clients must always transcend differences between them and figure out ways to work together. Lawyers therefore have to be conscious of differences, understand their significance, and work

12 Distiller & Steyn 2004:3.

13 *Ibid.*

14 Delgado & Stefancic 1992:1258.

15 White 1992:1388.

16 Fedler & Olickers 2001:57.

towards developing a rapport with their clients. Even skeptics of this approach will recognise the value of being tactful when confronted by differences over culture, gender or sexual orientation.¹⁷

Effectively raising and dealing with diversity issues in the classroom context requires several pre-conditions, in particular the development of trust between teacher and learner. Newell¹⁸ lists at least seven essentials in this regard, foremost among them being relationships.¹⁹ Unless the environment is considered 'safe' for talking openly about sensitivities and vulnerabilities, opportunities for exploring issues of diversity will be limited.

It is worthwhile considering the impact of diversity on the level of participation and engagement within the classroom. Studies in the USA show that race and gender play a significant role in student inclusion in law school classroom activity, but that the patterns of behaviour are complex.²⁰ They warn against positing the debate as an 'either/or' dichotomy, namely, viewing social difference as all-determining or non-existent. Thus, the diversity issue needs to be handled sensitively, taking care not to over-emphasise difference at the expense of commonalities.

Other studies have identified the lack of understanding of other cultures or 'cultural literacy'²¹ as a significant problem, pointing to the serious deficit in cultural knowledge among US students. Such cultural illiteracy is a function of at least two factors, both of which may have resonance in the South African context: inadequate preparation at school and college level;²² and the history of racially segregationist and other repressive policies, making mutual engagement and dialogue extremely difficult.²³

Above all, successfully navigating diversity issues requires courage and initiative on the part of clinical teachers, and the willingness to take risks. Dominguez characterises this as 'constructive trouble-shooting',²⁴ a reference to the catalytic role of law teachers in exploiting the plethora of diversity issues available in the classroom. He advocates the use of provocative problem-solving exercises in order to jump-start such interactions.²⁵

A useful approach would entail, in the first instance, acknowledging diversity by directly making reference to diverse populations in the classroom (race, gender, language, origin and the like). This may be followed by setting hypothetical

17 Hing 1993:1807.

18 Newell 1983:697-700.

19 The full list is: relationships, relevancy, listening, methodology, humour, handling silence, and preparation.

20 Mertz *et al* 1998:1. In a ground-breaking study on difference in several US law schools, exploring race and gender dynamics in the classroom, the authors conclude that a complex combination of circumstances, including context / 'local culture', affect (among others) student participation in class.

21 Hirsch 1983.

22 Vance & Prichard 1997:233.

23 Baker 2001:29.

24 Dominguez 1994:181.

25 Dominguez 1994:181.

problems drawn from cultural settings outside the dominant mainstream in order to enable students to conceptualise problem-solving strategies in an unfamiliar context. Issues may then be considered at a more substantial level by, for example, analysing the problem and the law through the lens of critical theory.²⁶

Thus, a problem associated with the traditional Zulu practice of *lobolo* (loosely, 'bride price') will yield entirely different results when analysed from the perspective of feminist theory, as opposed to the 'traditional' interpretation. On the one hand, it can be explained as a traditional practice designed to balance the economic scales when a member of one family joins the extended family of her prospective husband. On the other, it may be argued that the practice serves to reinforce the subordinate position of women in, particularly, traditional society by 'presenting them as prizes that are socially available to men rather than as educated young adults ready to contribute to the community as independent people'.²⁷

Furthermore, according centrality to diversity in clinical programmes will necessitate the redesigning of curricula and teaching materials. O'Donnell and Johnstone²⁸ suggest that such redesigning must:

- (a) Challenge definitions of difference that perpetuate relations of domination.
- (b) Open up opportunities for students to critically engage with the subject matter.
- (c) Validate and legitimate the knowledge, experience and language of the learners.
- (d) Acknowledge and identify critically, the perspectives of the authors of texts.
- (e) Offer an interactive approach to the phenomena under discussion.
- (f) Provide opportunities to challenge bias, racism and sexism.
- (g) Leave room for change, adjustment and new questions.

The value of such a set of parameters is that it is able to combine 'constructive trouble-shooting' with the clinical method, namely, interactive problem-solving, a critical approach to conventional norms, and the integration of the learners' experiences and world-views in the process of resolving legal problems.²⁹

The process of reconceptualising and rethinking the understanding of our reality is also referred to as 'revisioning', the notion of re-orienting our understanding and teaching of law, and our ability to make contextually appropriate legal decisions.³⁰ Of necessity, revisioning will entail challenging conventional methods and paradigms of understanding reality. It requires, *inter alia*, adopting a contextual approach to issues; recognising the impact of bias in decision-making; unearthing hidden assumptions and 'inarticulate premises'; actively engaging diversity; confronting one's own prejudices; and exploring the connections between apparently disparate issues.

26 In the past few decades, a new mode of analysis has arisen subjecting the enquiry to perspectives based on race, ethnic or feminist theories.

27 Perumal 2001:12.

28 O'Donnell & Johnstone 1997:19.

29 Vawda 2004:120-123.

30 Fedler & Olckers 2001:1.

6. Recommendations

The task of integrating diversity and multiculturalism into clinical law curricula is a multi-faceted task. It involves doing many things, both large and small.

- (a) Clinicians have themselves identified training in these areas as a priority. Such training can take various forms. One mechanism is the workshop, with experienced facilitators. These may be aimed at attaining a better understanding of diversity, developing the tools necessary to implement diversity programmes, and developing appropriate materials suited to specific locales.
- (b) To this end, a task team of clinicians may be mandated to monitor and develop this focus area, and to co-ordinate the various training activities.
- (c) Clinics may also tap into other institutional structures and resources which might offer training, support and resources, for example, if the university has an office for institutional culture.
- (d) There is also a need to do small, but important, things. The best way to start diversity programmes is to begin on the ground floor. Clinicians have to talk to students, colleagues, clients about what moves them; how difference impacts on their lives; what they would like to see addressed, and changed?
- (e) These perspectives can then be integrated into teaching materials, both into and across the curriculum. It need not be limited to skills offerings, but can be extended to content-based courses as well. Using the base of a trusting relationship with students, diversity issues must be engaged in a constructive, sensitive but questioning manner. Clinicians can use humour and various forms of media (film, cartoons, art, music, drama) to introduce and explore the rich diversity in our society.

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