

THE IMPACT AND PROMISE OF AMERICAN LEGAL EDUCATION  
IN TRANSITION COUNTRIES: THE KENYAN EXPERIENCE; WITH  
SPECIFIC REFERENCE TO MOI UNIVERSITY SCHOOL OF LAW

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I. INTRODUCTION

This paper is concerned with the implications that an American style of legal education may have in the social, economic, and political development of transitioning countries.<sup>1</sup> The question that we shall be concerned with is whether students trained in American law schools, having attended American law classes, and exposed to the American legal method, are enabled to stimulate any positive changes in their own countries encompassing various aspects of life in those countries, not least, the legal system. The role that the University of Pittsburgh School of Law (Pitt Law) has played in this regard will be of specific concern here. The second issue of concern for this paper is more localized addressing what the impact of an American pedagogical method is on the teaching of law in a non-American legal system. What effect if any does the use of the casebook method have on the study and teaching of law in a Kenyan law school, for instance? The third limb of our concern here is

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1. The term "transition countries" has been used in various ways. It has been used by political scientists to refer to those countries that have emerged from a previous non-liberal, non-democratic system of rule to a more open one characterized by periodic elections and a freer space for expression. However this usage has now been extended to refer to those countries, which after experimenting with rigid social, economic and political structures are now loosening up and adopting more liberal market oriented economic models that are consistent with a liberal democracy. Those countries that have established new governments following the end of armed conflict or civil wars are also described as countries in transition. *See, e.g.*, Luu Tien Dung, *Judicial Independence in Transitional Countries*. Kenya would be understood to be a country in transition in the sense that a previously authoritarian regime gave way to one that is based on the principle of multi-party democracy punctuated by periodic elections, freedom and equality of all. Since the 40-year-old de jure single-party dictatorship of President Moi, (and before him, President Kenyatta), Kenyans have held three elections and a fourth one is coming up in December 2007. Kenyans enjoy more democratic space now than they did during the single-party era. Further, the Kenyan government has adopted a less-centralized market economy and has instead embraced a production system that is premised on private enterprise. The Government is less involved in business limiting its powers only to the realm of regulation. There is a continuing trend in divestiture in previously government-owned enterprises.

evaluating the outlook for the future. The question being what can we expect to be the impact of an American legal education in the future legal, social, economic and political framework of countries in transition whose students have received their training in America.

## II. BACKGROUND: THE MOI UNIVERSITY SCHOOL OF LAW

The Moi University School of Law (“MUSL” or “the School”) was established in 1994, 13 years after formation of Moi University itself.<sup>2</sup> However, at the time of establishing the school (then known as the Faculty of Law), it was understood that as a constituent member of the entire university the school’s curriculum must be dovetailed into the overall goals of education set out by the university.<sup>3</sup> In this regard, the School of Law had to be committed to the development of a curriculum that fitted into the overall

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2. Moi University was established in 1984 pursuant to the recommendations of the Mackay Report of 1981. *See* C.B. MACKAY, REPORT OF THE PRESIDENTIAL COMMITTEE ON THE ESTABLISHMENT OF A SECOND UNIVERSITY IN KENYA (1981) [hereinafter MACKAY REPORT]. The MACKAY REPORT was a culmination of the committee’s painstaking visits to all parts of Kenya, collecting views of the expectations of Kenyans from university education and a synthesis of those views. The School of Law was established in 1994 with the objective of ‘providing qualified students with a course of study designed to engage them to experiences that would develop competent advocates committed to the social aims of high quality legal representation, national development and public service.’ *See also* Moi University, School of Law, at <http://www.mu.ac.ke/academic/schools/law/index.html>. *See also* the Moi University Act cap 210A of the Laws of Kenya, section 3 (1) (“There is hereby established a University to be known as the Moi University.”) Section 4 subsection (1) provides that:

The *functions and objects* of the university shall be—

- (a) To promote university education aimed at producing mature and conscientious graduates with the skill, ability and desire to contribute to the well-being and development of the people of Kenya in accordance with the national philosophy of mutual social responsibility;
- (b) To provide university education for national service and development which reflects the national cultural heritage;
- (c) To develop and transmit knowledge and skills through research and training at undergraduate and postgraduate levels either directly or through the medium of connected colleges, schools or institutes;
- (d) To foster national consciousness and unity;
- (e) To preserve, produce, process, transmit and disseminate knowledge and stimulate the intellectual life and cultural development of Kenya;
- (f) To conduct examinations for, and to grant degrees diplomas and other awards of the university;
- (g) To determine who may teach, what may be taught and how it may be taught in the University
- (h) To play an effective role in the development and expansion of opportunities for Kenyans wishing to continue with their education.

(Emphasis added.)

3. *See* Curriculum for the Moi University Faculty of Law (on file with the author).

University's goal of promoting social transformation in the country.<sup>4</sup> The blueprint informing the establishment of the university called upon institutions of higher learning to promote social justice and expand educational opportunities in Kenya.<sup>5</sup> In this regard the School of Law was established "to provide qualified students with a course of study designed to engage and challenge their intellect while exposing them to experiences designed to develop competent advocates committed to the *social aims of high quality legal representation, national development and public service.*"<sup>6</sup>

The designers of curriculum envisaged that the program they suggested would provide the framework for attaining this objective. It is important to note that the main theme in the school's objective is the promotion of national development and public service.<sup>7</sup> Having regard for this theme, the question then turns on the extent to which the "immersion" of Kenyan students into the American legal culture, encompassing, as it does, the legal education system, contribute to the promotion of national development and ideals of public service in Kenya, so as to dovetail with the goals of legal education as espoused by the School. To achieve the objectives of the curriculum, the School of Law combines the practical oriented clinical method with the traditional classroom instruction method.<sup>8</sup> The curriculum stipulates that the bachelor of laws course study will provide instruction in fundamental legal doctrine, legal theory, and advocacy skills by way of traditional classroom discussion, simulated lawyering experiences, law related externships and live-client representation.<sup>9</sup> It emphasizes an approach with a strong orientation to social justice and public service.<sup>10</sup> While recognizing the many challenges facing Kenyans, the school sets out to prepare students who have the ability of identifying social phenomena and the need for change and generating solutions consistent with those needs and phenomena.<sup>11</sup> Thus, the aim of the school is to inculcate among students the values of social consciousness

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4. *Id.*

5. See MACKAY REPORT, *supra* note 2; see also Moi University Act, *supra* note 2, section 4 (spelling out the functions of the University).

6. *Id.* (emphasis added).

7. See MACKAY REPORT, *supra* note 2.

8. See, e.g., T.O. Ojienda & M. Oduor, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, INT'L J. C.L.E. 49 (2001).

9. See Curriculum for the Moi University Faculty of Law, *supra* note 3.

10. *Id.*

11. *Id.*; see also Ojienda & Oduor, *supra* note 8, at 53.

leading to activism that would contribute towards the attainment of the ideals of social justice.<sup>12</sup>

The School, through its curriculum, also seeks to impart practical skills of advocacy by which it means the skills of analogical reasoning, use of precedents, fact finding, research writing, persuasive speaking, and effective listening.<sup>13</sup> The ultimate aim of that approach is to imbue in the students the necessary skill and ability to identify legal problems and legal principles applicable thereto, and to use those principles to resolve the problems and to think critically about legal problems and the legal system.<sup>14</sup> At the School, law has less to do with learning legal rules. It is viewed as a process of human interaction transcending moral, social, economic, and political issues.<sup>15</sup>

### III. THE PLACE OF LEGAL EDUCATION IN A DEVELOPING/TRANSITIONING COUNTRY

As the term suggests countries in transition face an uphill task in ensuring the social, economic and political well-being of their citizens.<sup>16</sup> Their changing economic outlook means that most of their citizens are unable to meet their day-to-day needs. Faced with the choice between paying for food and other basic necessities on the one hand, and paying fees for legal services on the other, it is clear what option these citizens will take.<sup>17</sup> In recognition of the attendant injustices suffered by a greater proportion of the population arising from the inability to access the legal system, lawyers must be willing to extend their professional services to those who, because of lack of resources, are unable to pay for it. Where the government in a developing economy seeks to improve the social, economic and political systems in relation to its citizens, law schools must endeavour to take their distinctive

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12. See Curriculum for the Moi University Faculty of Law, *supra* note 3

13. *Id.*

14. *Id.*

15. *Id.*

16. A good number of the countries in transition are located in sub-Saharan Africa. It has been said that Africa is the only continent in the world that has recorded negative economic growth in the last fifty or so years. According to van der Veen, while the standards of living the world over experienced unprecedented improvement, sub-Saharan Africans became poorer, were the victims of misrule, violence, corruption and AIDS. See R. VAN DER VEEN, WHAT WENT WRONG WITH AFRICA: A CONTEMPORARY HISTORY 13 (2004).

17. See, e.g., D. Mugonyi & F. Thoya, *The High Cost of Seeking Justice*, THE DAILY NATION, Nov. 29, 2006 (reporting that Kenya's Chief Justice had just gazette new remuneration scales for lawyers' services and observing that the costs for legal representation had in certain cases increased by up to fifty percent).

place in such overall national programs. Lawyers must therefore fit within the process of development in transitioning countries; law schools in turn must reconsider how they “teach students to think about judicial administration, the litigation process, and socialization of legal services.”<sup>18</sup>

Developing countries also tend to have nascent democratic institutions the sustenance of which requires the active input of professionals including lawyers.<sup>19</sup> Lawyers are particularly well-placed to engage with systems of political governance, pushing them to the limits, and, in the process engendering changes that conform to current international best practices that entail democratic rule, respect for the rule of law, freedom, and equality for all.<sup>20</sup> To be able to attain these objectives, law schools, which are the institutions that prepare future lawyers, must be in touch with the present and in that regard, tailor their curricula in such a way to ensure that they remain relevant to current needs of the society. Thus lawyers must be equipped with skills that prepare them to be agents of change in society. In this regard, one author has noted that one of the goals of legal education, particularly in respect to Africa, is “to prepare graduates equipped intellectually to serve more effectively as agents of change—since the process of development surely

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18. See J.C.N. Paul, *The Goals of African Legal Education*, in PROCEEDINGS OF THE CONFERENCE ON LEGAL EDUCATION IN AFRICA 16-24 (Vanderlinden ed., 1968), *excerpted in* WILLIAM BURNETT HARVEY, AN INTRODUCTION TO THE LEGAL SYSTEM IN AFRICA 2-8, 2 (2004).

19. In a repressive regime.

20. The so-called struggle for the “second liberation” was spearheaded by lawyers through devices such as public interest suits pursued with a view to pressurizing the government either to repeal repressive laws or to pass new ones that would guarantee freedom for the Kenyan citizens. Before the resumption of multiparty democracy, Kenya was arguably ruled by a repressive government that stifled dissent and that was grossly intolerant of divergent political opinions. Perceived critics of the government were arrested and detained. Lawyers were at the forefront in either representing such dissidents in their trials or alternatively filing challenges to the constitutionality of the acts of government officials. The degree of success was varied. *See, e.g.*, David Mukaru Nganga v. Republic (High Court) Miscellaneous Application No.112 of 1990 (the applicant could not get orders to restrain the police from illegally harassing or detaining him the judge arguing that this was a case for judicial review rather than one involving a violation of constitutional rights.) *See also* Koigi Wa Wamwere v. A.G (High Court) Criminal Application No.180 of 1990; Kenneth Njindo Matiba v. Attorney General (High Court) Miscellaneous Application No.666 of 1990; Rev. Lawford Ndege Imunde v. A.G. (High Court) Miscellaneous Application No.180 of 1990; *Harun Thungu Wakaba v. Republic* (High Court) Miscellaneous Criminal Case No. 34 of 1992. *See also* Kathurima M’Inoti, *The Reluctant Guard: The High Court and the Decline of Constitutional Remedies in Kenya*, THE NAIROBI LAW MONTHLY, No. 34 (July 1991); G. Muigai, *The Judiciary in Kenya and the Search for a Philosophy of Law: The Case of Constitutional Adjudication*, in ICJ-KENYA, 2 CONSTITUTIONAL LAW CASE DIGEST, 159-89 (2005); J.B. Ojwang & J.A. Otieno-Odek, 1988, *The Judiciary in Sensitive Areas of Public Law: Emerging Approaches to Human Rights Litigation*, 35 NETHERLANDS INT’L L. REV., *reprinted in* ICJ-KENYA, 1 CONSTITUTIONAL LAW CASE DIGEST, 2004; G.K. Kuria, *Litigating Kenya’s Bill of Rights*, in HUMAN RIGHTS AND DEMOCRACY IN EAST AFRICA: THE CONSTITUTIONAL IMPLICATION OF THE EAST AFRICAN COOPERATION 67-128 (K. Kibwana ed., 1997).

entails dislocation, sacrifice and commitment, notably by those few lucky enough to get parchments from universities.”<sup>21</sup>

Limitations as to resources affect not only the consumers of justice but also prospective future lawyers. Thus, those who would wish to pursue law as a career choice may find that they are incapable of doing so because of the sacrifices involved in paying for it.<sup>22</sup> At the same time, the increasing population means that there are more people in need of legal services today than there were yesterday.<sup>23</sup> If the number of lawyers is not rising proportionately with the population, it is clear that demand will outstrip supply within a short time. Yet this is the situation that exists in most developing economies, including Kenya’s. As well as engaging in private practice, lawyers are also needed to fill the many positions in public service that require legal expertise e.g. as judges, administrative officials, heads of legal tribunals and commissions, registrars and so on. Where there are fewer lawyers than are needed, provision of services by government is likely to be deficient. The goal of legal education in this regard should be to prepare lawyers who will “provide a very large proportion of national leadership at all levels of authority.”<sup>24</sup>

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21. See Paul, *supra* note 18, at 3.

22. In Kenya there are only two legally recognised universities for training lawyers; Moi University and the University of Nairobi. There are two categories of students—government sponsored and privately sponsored. The fees for the former are partly paid by the government but they are eligible for government loans granted through the Higher Education Loans Board. In the latter category the students are entirely responsible for their own fees and other amenities and are generally not eligible for government support. Generally it costs around Kenya Shillings 200,000 (US dollars 3,000) for tuition fees alone per year. While probably modest by international standards, this is an amount that is well beyond the reach of many individuals in Kenya given the economic status of the country.

23. Kenyans numbered around 30 million by the last census conducted in 1999. It is currently estimated that the population has increased by close to 3 million. The number of lawyers currently stands at an estimated five thousands. That gives us the ratio of one lawyer for every seven thousand people. Even assuming that half of the 33 million is made up of non-adults and considering that not each of the persons in the remaining half will always require the services of a lawyer, it is clear that we still have more people who cannot access lawyers because there are not enough of them.

24. See ALBERT HARNO, LEGAL EDUCATION IN THE UNITED STATES 122-25 (1953), *excerpted in* WILLIAM BURNETT HARVEY, AN INTRODUCTION TO THE LEGAL SYSTEM IN AFRICA, 8-10, 9 (2004).

#### IV. THE COLLABORATION BETWEEN MOI UNIVERSITY SCHOOL OF LAW AND UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

The collaboration<sup>25</sup> between Moi University School of Law and the University of Pittsburgh School of Law can be traced back to the year 2000 on the occasion of a visit by Professor Burkoff at the School. This culminated in participation by a faculty member in the semester at sea program. While this was the beginning of a relationship that currently runs to over five years, the School has a rich history of American influence in its curriculum. The first Dean of School of Law, Professor Gaskins, was an American who together with his compatriot Dr. Bennett presided over the launch of the school in 1994 and subsequent development over the following four years. Both were instrumental in the development of the School curriculum and certain of the courses taught have a strong American content.<sup>26</sup>

The school has also benefited from the experience of other American scholars over the years, the effect of which has been to widen the scope of learning at the Faculty.<sup>27</sup> The two schools have over the years cultivated closer collaboration culminating in the Moi-Pittsburgh Training program by which students from the Moi University benefit by attending a fully sponsored Master of Laws program at the University of Pittsburgh, School of Law.<sup>28</sup> Working with other collaborating agencies, companies and individuals, the University of Pittsburgh put together a sponsorship through which Moi

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25. The term “collaboration” is employed here for lack of a more precise description. Unlike other similar arrangements with other universities across the world, there is no memorandum of understanding between Moi University on the one hand and the University of Pittsburgh on the other concerning the manner of training of students from the former. The process is based entirely on trust and precedent which so far has been excellent in its working. See, e.g., *Signing of a Strategic Partnership Agreement Between Indiana University-Purdue University Indianapolis (IUPUI) and Moi University (MU)*, available at <http://www.mu.ac.ke/general/indiana/indianamu.html>.

26. The Legal Research Methods & Writing course encompasses elements that are drawn from a system that is distinctively American. For example some of the skills sought to be imparted on students include briefing cases, brief writing and writing the inter-office memorandum. In Critical Thinking and Writing, students engage in exercises designed to enable them question legal doctrine and suggest improvements for the future. Skills of appellate advocacy, appellate argument, strategies and skills for complex fact organization and persuasive writing are core in the Advanced Legal Writing and Advocacy course. The Moi University, School of Law had a pioneering influence in this and many other areas of legal education. For instance and again based on the American model, the School pioneered the concept of clinical legal education and student driven legal aid in the country. See Ojienda & Oduor, *supra* note 8, at 57.

27. Professor McDearman taught Trial Advocacy between 1999 and 2001.

28. See, e.g., *From the Director*, 6 CILE NOTES 1 (Fall 2001).

University students attend University of Pittsburgh School of Law for an intensive one year LL.M. Program.<sup>29</sup> It is intensive because it is full-time and students are exposed to the rigours of American law schools just like and together with American students.<sup>30</sup> After a two semester academic exposure, students are normally attached either to a company or law firm for slightly over four weeks.<sup>31</sup>

The understanding with Moi University is that following this training, the students will be absorbed at the Moi University School of Law as part of the teaching staff.<sup>32</sup> In this way, Pitt Law actively engages in training future staff members of the Moi University of Law. So far, five Moi University students have benefited from this arrangement and even though the absorption rate has been slow, there are signs that it will improve in the near future.<sup>33</sup>

#### V. IMPACT OF AMERICAN PEDAGOGICAL METHODS ON THE TEACHING OF LAW IN KENYA

The style of training employed in the law school ultimately determines the approach adopted by the student lawyers when they get out into practice. A method of training that sharpens the research ability and the inquisitiveness of the student will spawn practitioners well placed to identify problems in society and apply the appropriate rules for their resolution. Thus university legal education must be so poised as to equip future lawyers with the

29. Sponsorship has been secured from the likes of Alcoa Foundation, Frank and Sara West of the Franklin West Apartments among others. *See, e.g., Tenth LLM Class Arrives*, 9 CILE NOTES 15 (Fall 2004); *2004 LLM Class Begins In Impressive Fashion*, 8 CILE NOTES 18 (Fall 2003); *Law School Recognizes Generosity of Alcoa Foundation and Franklin West Inc.*, 6 CILE NOTES (Fall 2001).

30. *See, e.g., University of Pittsburgh School of Law, Master of Laws Program (LL.M.): A Small Program Designed to Have a Big Impact*, available at <http://www.law.pitt.edu/academics/llm.php>.

31. *Id.* At the end of the academic year, the Center for International Legal Education which is in charge of the LL.M. program secures placements for internship for the LL.M. students either with a Pittsburgh law firm or corporate legal department for purposes of giving the students some practical experience following their formal classroom training. Some of the companies and law firms that have offered internships to LL.M. students are: Alcoa, Buchanan Ingersoll, Cohen & Grigsby, Deloitte and Touche, H.J. Heinz, Pennsylvania Attorney General's Office, Westinghouse, US Steel, Malakoff, Doyle & Finberg PC and so on.

32. *See International Partnerships Reach New Heights of Productivity*, 8 CILE NOTES 6 (Fall 2003).

33. Victor Mosoti LL.M. '01, Evelyn Kamau, LL.M. '02, Vincent Mutai, LL.M. '03, Maurice Oduor, LL.M. '04 and Linda Khaemba LL.M. '05 have all been beneficiaries of the program. Victor Mosoti has made significant contribution in the field of international trade with a number of publications to his name. Maurice Oduor is currently a lecturer at the Moi University School of Law. *See International Partnerships Reach New Heights of Productivity*, 8 CILE NOTES 6 (Fall 2003).

experience that will make them effective in their subsequent professional roles.<sup>34</sup>

To succeed in this endeavor, the Moi University of Law employs various pedagogical methods; lecture method, simulation, tutorials, and clinical legal approach.<sup>35</sup> The lecture method has for some time been predominantly applied.<sup>36</sup> Students undergo lecture sessions in which notes are either dictated to them interspersed with explanations or question and answer sessions.<sup>37</sup> The lecture method may be supplemented with readings assigned to the students which may or may not be discussed in class. Tutorials have been less employed at the school owing to large student populations and the accompanying dearth of resources. The lecture method, while having its potential benefits, e.g. cost-effectiveness and ability to deal with latest developments in the area of study, is limited in many other ways.<sup>38</sup> First, it risks being a monologue where students only marginally participate in the progression of events in the class, it depends more on the preparedness and versatility of the teacher in entwining it with other methodologies to enhance its effectiveness.<sup>39</sup> The other risk is that it may turn into a one-sided dictation session with the attendant propensity for students to memorise notes and not

34. See, e.g., H.J.A. Lugulu & J. Chebii, *Pedagogical Methods in Law: The Moi University Experience*, LAW SOC. OF KENYA J. (2003).

35. *Id.*

36. See Ojienda & Oduor, *supra* note 8, at 54.

37. See, e.g., Lugulu & Chebii, *supra* note 34, noting in regard to the lecture method that: The lecture or text method supplements the case method in second, third and fourth years of the curriculum. Lectures are generally seen as a cost effective way of imparting the main ideas in an area to a large number of students. Lectures also enable the lecturer to tell students the latest development in an area and to explain any particularly complex parts of a subject. With good planning, the lecture may facilitate an orderly procedure in teaching, and arrangement of the subject matter in a way that avoids waste of time and energy and a redistribution of emphasis to secure the greatest cooperation from the students and maintain their active interest. With pauses for a question and answer session, a good lecturer can link up an organic relationship that displays constant mutual interaction. Lastly a good lecturer could help in introducing the subject from the known to the unknown, the simple to the complex, and the concrete to the abstract.

38. *Id.* where the authors note the disadvantages of the lecture method as including: But this method depends on the personality of an individual lecturer and is therefore teacher centred and not student centred. It therefore does not suit different levels of students' intelligence. It is also dominated by one-sided verbalism without providing enough suitable opportunities for self activity by students. There is also the risk that the lecturer may resort to dictating notes and the students to resort to memorizing them. While note taking may help the students to listen actively and reflectively in order to relate what is being taught to the existing knowledge of the subject the risk that the lecture method may make students to be passive is real. Lectures, like the case method, require class attendance. It is therefore assumed that the students will regularly attend them.

39. *Id.*

actively question the principles dotting the numerous pages they may have jotted down.<sup>40</sup> The lecture method also assumes regular class attendance-this of course is not always the case notwithstanding measures taken to eliminate cases of truancy.<sup>41</sup> The lecture method also requires access to up-to-date legal sources to ensure that the sessions remain relevant to current challenges.<sup>42</sup>

At Moi University, the deficiencies of the lecture method have been recognized. To counter those short-comings, the school has incorporated the clinical legal education method as a complement to the theory-intensive lecture method. The clinical method is said to be a problem-solving-oriented approach which exposes students to various legal problems they may have encountered or are likely to encounter in the theoretical phase of their study.<sup>43</sup> The clinical method may assume either the simulated or live-client approach or both. In the simulated approach, students get to deal with realistic problems-problems which have occurred before or are likely to happen again in real life.<sup>44</sup> Students consider the problem and suggest solutions. The problem is posed within the context of simulations whose content is associated with recent or current areas of study. In the live-client representation approach, students encounter real problem as presented by “live” clients. Students at this stage apply the skills learnt in other units to practical problem solving.<sup>45</sup>

Generally there are two broad subject areas that utilize this approach; the concentration or clinical seminar and the concentration or clinical externship in-depth learning and practice in a chosen area of study simultaneously with participating in an externship program. The externship entails attending court hearings, advising unrepresented accused persons on basic procedures of court and attending and holding legal literacy meetings and seminars.<sup>46</sup> In clinical externship, students get to work directly with qualified practitioners on matters where legal representation is contemplated.<sup>47</sup> While the first approach gives an opportunity to students to render on-the-spot legal advise, the second approach is relatively permanent in the sense that it allows for the creation and development of a professional relationship between the students as the

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40. *Id.*

41. In Moi University, if a student fails to attend 20% of scheduled classes, she is deemed to have failed to attend the course and may be barred by Senate from sitting for the examinations in that course.

42. Lugulu & Chebii, *supra* note 34.

43. See Ojienda & Oduor, *supra* note 8.

44. *Id.*

45. *Id.* at 57.

46. *Id.*

47. *Id.*

lawyers (of course under the direct supervision of a qualified legal practitioner, usually a staff member) and the client.<sup>48</sup> In this regard, the school established a legal aid clinic to provide a forum by which students will meet clients and attend to their legal problems and learn while in the process.<sup>49</sup> The goals of the clinical program are four-fold:<sup>50</sup>

- (a) To provide students with opportunities for applying techniques and information acquired through prior simulated experiences especially, interviewing, counseling case, planning and litigation;
- (b) To provide students with opportunities for legal practice;
- (c) To provide students with opportunities to develop their ability as problem-solvers; and
- (d) To provide students with opportunities to provide legal assistance either through the School's own projects or in co-ordination with external projects.

In view of the foregoing, one who attempts to introduce a different way of pedagogy in the School of Law is faced with the immediate concern of inadequate resources. The Pittsburgh approach to learning and teaching law requires that the university be endowed with sufficient resources to support the intensity with which it is delivered.<sup>51</sup> Thus, faculty members must be the "best in the game," the library must be well stocked, with both traditional and modern resources, the school must innovate and create programs that attract a greater number of students, and so on.<sup>52</sup> The Moi University School of Law was established by the University pursuant to its mandate under a statute.<sup>53</sup> This has meant that until recently, following the introduction of the privately sponsored program as an income generating option, it has largely depended on the Kenyan government for funding.<sup>54</sup> The dearth of teaching facilities coupled with a relatively sparse collection of library materials, means that the casebook approach to legal learning cannot be applied in its entirety.<sup>55</sup> For a law teacher with a "first-hand advantage" of the American pedagogical method wishing to foster in his or her students the habit of finding the law in

48. *Id.*

49. *Id.*

50. *Id.*

51. See, e.g., R.A. Matasar, *The Rise and Fall of American Legal Education*, New York Law School Public Law and Legal Theory Research Paper Series 04/05 #28, at <http://ssrn.com/abstract=730563> (decrying the increasing costs of legal education in America).

52. *Id.*

53. See the Moi University Act, *supra* note 2.

54. See Moi University, School of Law, *supra* note 2, at <http://www.mu.ac.ke/academic/schools/law/index.html>.

55. See Lugulu & Chebii, *supra* note 34.

the cases, questioning the rationale behind judges' decisions and establishing the philosophical underpinnings of law, the task becomes arduous if not well nigh impossible.<sup>56</sup>

Yet this cannot be a reason to abandon the project altogether for it has its own distinct advantages. Thus even while attempting to achieve the most within the constrained resources available, it has been possible to combine aspects of the American pedagogy, specifically those aspects which can be easily applied without significant strain, with those aspects of Kenyan teaching methods that will make the educational experience much more than a passive, unidirectional enterprise. It is possible to prepare course outlines well in advance, put together some reading material from disparate sources well in advance, and require students to be acquainted with those materials prior to class meetings. During class, there will be more discussion of these materials and active questioning rather than a passive activity dominated by the teacher's monologue. At first, students confronted with this new approach have appeared lost, not sure whether the teacher was providing any guidance or merely expressing random thoughts on the subject. Thus, it pays to forewarn the students that a new approach has been adopted, one that is less of note-taking but more of active engagement of the mind in respect of the topic at hand. Furthermore, it pays to warn the students that participation in the discussion will be significant in the final assessment of their marks for the course. The problem with tallying the extent of one's participation in class discussion in the final grade is that the teacher has limited ways in which to grade students. The University requires that students be assessed through two continuous assessment tests (CATs) administered at varied intervals in the course of the semester, constituting thirty percent of the overall examinations grade and subsequently a written examination at the end of the semester making up the remaining seventy percent.<sup>57</sup> No provision is allowed for the teacher's discretion in the manner of assessment. There is thus little room for creativity in grading students particularly when it relates to active contribution in class.

While failing to attend an overall of twenty percent of the class may be a reason to bar a student from sitting the University examinations, this is a rule that is rarely enforced partly because huge student numbers make it virtually impracticable to take roll calls in every other class.<sup>58</sup> This therefore calls for

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56. *Id.*

57. See Curriculum for the Moi University Faculty of Law, *supra* note 3.

58. Currently there are about 500 students in first year alone. Owing to this big numbers, the School has had to split them into three groups. But even then, classes tend to be crowded making the task of

a method of teaching that combines various approaches, each complimenting the other to the extent possible. Thus, in addition to lectures where the teacher may or may not give notes, students may be required to read further on their own, provided the teacher ensures that the materials referred to are readily available. While the School has attempted to adopt the clinical method, the success can only be described in measured terms. Lack of support from the University has spawned disinterest on the part of faculty members, which in turn has caused the clinical component grind to a virtual halt. In view of these challenges, it is important that the School embraces new innovative ways of teaching law which while being effective, will not constrain limited resources that the School currently commands.

#### VI. WHAT IS THE POTENTIAL OF THE LAW SCHOOL'S PEDAGOGIC APPROACH IN DEVELOPMENT?

We have seen how the Moi University School of law's curriculum is premised on the ideal of development and public service.<sup>59</sup> Thus, the skills imparted to the students must be geared toward preparing them for this role in their future professional lives. In a developing economy like Kenya's, the lawyer's role in contributing to this development is crucial. In keeping with the wider mandate of lawyers to participate toward the development of the law for the benefit of the public,<sup>60</sup> graduates from Moi University School of Law are to be equipped to play this role. The clinical approach employed by the law school is crucial in preparing the school's graduates for various public roles that have a bearing on the development of Kenya, whether social, political, or economic.

In Kenya, the question of access to legal services is critical.<sup>61</sup> The grinding poverty level compromises the ability of majority Kenyans to engage the legal system with a view to having their rights protected. At a time when legal practice has assumed an increasingly commercial outlook,<sup>62</sup> many would-

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teaching a rather unenviable one.

59. *See supra* Part II.

60. *See* Law Society of Kenya Act cap 18 of the Laws of Kenya, section 4 (setting out one of the functions of the Law Society of Kenya as being to assist the government and the public in matters relating to legislation and law).

61. *See* Curriculum for the Moi University Faculty of Law, *supra* note 3.

62. The commercialization of law practice the world over has been said to take away from it any social roles that lawyers ought to play. According to Berle, legal practitioners are inclined to offer their services to those who pay the astronomical fees that they charge. In a capitalistic society where the vast majority of the resources are placed in the hands of the minority powerful, it becomes clear who the legal

be consumers of legal services are clearly left out. Lawyers in a transitioning economy like Kenya's have been criticized for pricing justice out of reach of many people.<sup>63</sup> In that regard therefore, a program that inculcates in lawyers the ideals of service to the less-advantaged members of the public is very relevant for this country. Such a program is also crucial in enhancing the development of institutions of governance for the public good. The value of public service imbues in the future lawyers the urge to engage with public institutions to ensure that they do their work where government fails to do so or do it in a way that properly secures the rights of citizens.

#### VII. HOW DOES THE MOI-PITTSBURGH COLLABORATION FIT IN THE ABOVE?

Both schools share ideals that are critical.<sup>64</sup> First, there is a strong public service element.<sup>65</sup> Second, there is a deliberate attempt at producing graduates who can engage with the system of governance for the benefit of consumers of justice and the public good.<sup>66</sup> There is therefore potential for even greater collaboration leading to greater benefit for both law schools and the wider university community. Since the Moi-Pittsburgh collaboration, about five Moi University graduates have been trained at the University of Pittsburgh.<sup>67</sup> They have gone on to serve various institutions whether in Kenya or internationally in various capacities.<sup>68</sup> For those who are working in international institutions, their training at Pittsburgh provided them with not only the opportunity but also with the skills that have enabled them exert themselves effectively in those endeavours.

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system would serve efficiently. *See* Berle, *The Modern Legal Profession*, in 9 *ENCYCLOPAEDIA OF THE SOCIAL SCIENCES* 340-45 (1933).

63. In regard to the rather unflattering role of lawyers, Dias has noted that "there is a growing criticism of the legal profession in developing countries as being a 'disabling profession' and a strong sentiment that human rights are too important to be left to lawyers alone." *See* C.J. Dias, *The Rights of the Child: Emerging Human Rights Agenda for Third World NGOs*, in *RIGHTS OF THE CHILD: SELECTED PROCEEDINGS OF A WORKSHOP ON THE DRAFT CONVENTION ON THE RIGHTS OF THE CHILD—AN AFRICAN PERSPECTIVE* 9-11 (May 1988).

64. Leadership and public service being at the forefront. *See, e.g., The School of Law's Mission, Priority Goals and Means of Achievement*, at <http://www.law.pitt.edu/about/index.php>; *see also* the Moi University webpage, *supra* note 3.

65. *Id.*

66. *Id.*

67. *See International Partnerships Reach New Heights of Productivity*, 8 *CILE NOTES* 6 (Fall 2003).

68. *See supra* note 33.

Those employed in the public service have also had the opportunity to put in practice the skills governed in the course of their training at Pittsburgh and in Moi. At least one graduate has ended up in academics as a lecturer in Moi University School of Law. For such, the challenges are manifold but it is here where it becomes clear that there is great promise for the continued training of Moi graduates at Pittsburgh. As we had noted earlier the case-book method of pedagogy is employed in limited ways. Partly due to a dearth of resources and partly due to an insular conservative tradition of lecturing, our law school has had to rely more and more on law-teachers to provide the bulk of materials for student's consumption.<sup>69</sup>

The attendant passiveness of the process cannot be gainsaid. For a lecturer who has been immersed in the Langdellian method, albeit for only a short duration, continued traditionalism is usually hard to justify emphasizing, as it does, greater industry on the lecturer rather than students. On the other hand the lure of the casebook method is hampered by the inability of both the law school and the students to absorb the extra-costs that will likely be incurred by a shift into "modernism." Consequently, there arises a need to consider the merits and demerits of both systems with a view to adopting a system that strikes a balance between the two for the ultimate benefit of the students. This calls for partial use of the lecture method and partial use of cases. Thus, the lecturer would assign individual cases to students which would then be discussed in the class on the basis of questions given before hand or raised during the session. The theoretical aspects would then be filled-in by way of lectures or other forms of discussion such as tutorials.

Whatever their stations in life, Pittsburgh graduates from Moi University have had significant impact drawing from their training in both institutions for a transitioning country, their contribution both direct and indirect cannot be over emphasized. It is for this reason that collaboration must continue to exist and must develop in other areas in the future.

#### VIII. EXPORT OF LEGAL EDUCATION: WHAT PROSPECTS FOR THE FUTURE?

The collaboration between Moi and Pittsburgh universities has as yet many unexplored opportunities and possibilities. As already noted, Kenya is a country in transition socially, economically and politically. In this state, lawyers can and should play a significant role in shaping the institutions that are responsible for the transformation. Notwithstanding the underdevelopment

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69. See Lugulu & Chebii, *supra* note 34.

currently afflicting many African states, there is hope for a future in which those states will play a direct influential role in charting out the social, political and economic goals of the world. But even if this is too optimistic a view, there is no denying the need to train lawyers who are relevant to the current situation prevailing in the society in which they live. Opportunities for agents of change (such the University of Pittsburgh) to be part and parcel of these changes need not be gainsaid. So far, it has been a one sided affair between Moi University and the University of Pittsburgh. Some semblance of balance may be created by a faculty or student exchange program which will also serve as an avenue for information exchange and sharing. Students and faculty from Pittsburgh can add to and enliven the learning environment in Kenya just as Kenyan ones have been said to do in Pittsburgh. In this regard therefore, there is room for expanding Pittsburgh's Study Abroad Program to include Moi University as well. Such collaboration exists between Moi University and other universities so it will not require the breaking of new ground.

Having regard to the lack of resources that is a perennial problem to universities in Africa, and particularly so in Kenya, this collaboration must occupy a very central role in Moi University School of Law's program. For this to succeed, it must be a long-term venture probably set down in the form of a strategic alliance as between both Schools of Law. Such an alliance might be buttressed with a vision that transcends the law schools and adopts an interdisciplinary outlook that contemplates the inclusion of other faculties, departments or schools. Already there are other alliances between the two universities and it should not be difficult to forge a more broad-minded collaboration that sets out a unified vision.

Other unexplored areas include participation in moot court competition. The Moi University School of Law is a regular participant in the only intra-Africa moots held annually under the aegis of the University of South Africa's Center for Human Rights. The school has returned very impressive results in successive All African Human Rights Moot court Competition. The School has also participated in the International Humanitarian Law Moot Court Competition held annually in Arusha Tanzania under the organization of the International Committee of the Red Cross. The University of Pittsburgh School of Law, on the other hand, has a rich mooting history. The Center for International Legal Education (CILE) has been instrumental in inculcating the mooting culture in the School of law. Examples of such moot competitions

would include; the Niagara International Law Moot Court Competition<sup>70</sup> and the Willem C. Vis International Commercial Arbitration Moot.<sup>71</sup> Since both law schools have a strong mooting background, this may be harnessed as just one of the facets of collaboration between them.

The Pitt Law has been able to establish very successful centers of excellence and other programs. CILE has broken new ground in fostering development in international scholarship. CILE's experience in this regard can offer valuable lessons for Moi University's School of Law in the latter's endeavour to serve as a beacon of legal education and scholarship within the East African region and beyond. There are many other ways for this relationship to be made prosperous and relevant for both universities. The possibilities are inexhaustible, the opportunities, enormous. They cannot all be explored within the limited confines of this paper. Of course challenges will lurk around the corners, waiting to bump these lofty ideals off the course, but all that is required to deal with those is planning and perseverance.

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70. See, e.g., *Awards Again for Niagara Moot Court Team*, 3 CILE NOTES 7 (Fall 1998).

71. See, e.g., *Five Teams, One Pitt Law Family at the Vis Competition*, 8 CILE NOTES 15 (Fall 2003).