

VARIA

Conference of the Southern African Society of Legal Historians, 12-16 May, Kwa Maritane, South Africa

The Southern African Society of Legal Historians hosted a conference in the beautiful Kwa Maritane Nature Reserve from 12 to 16 May. The theme of the conference was “*Ius est ars boni et aequi*” and this well-known definition gave rise to presentations on an amazing number of topics. The conference was attended by participants from fourteen countries, reflecting the international nature of Roman law and legal history. Professor Emeritus Philip Thomas, President of the Society, welcomed the participants and delivered the opening address (see *infra*).

Professor Laurens Winkel from the Netherlands delivered the first keynote address entitled “Remarks on the uniformity of natural law in the history of legal philosophy”. He was followed by Dr Dire Tladi, the second keynote speaker and South Africa’s representative at the United Nations International Law Commission, who spoke on “The use of force against non-state actors”.

Two speakers then brought Greek law into the picture: Professor Emeritus Gerhard Thür from Austria spoke about “Rationality and irrationality in ancient Greek law of procedure” while Professor Yasunori Kasai from Japan addressed the audience on “Philosophical foundations of the notion of *aequitas* (*epikeikeia*) in Greek and Roman law”.

The parallel session dealt with villains: Professor Caroline Nicholson from South Africa spoke about “The splendid villain and the enemy of mankind. Piracy in the late Roman Republic and early Principate” while another South African academic, Dr Gus Waschefort, spoke about “The prosecution of Karl Dönitz at Nüremberg: *Ius est ars boni et aequi?*”

The next session treated of customary law. Professor Emi Matsumoto from Japan presented a paper titled “Searching for customary law in Japan: Is Japanese law a mixed system of civil law and customary law?” while Professor Gardiol van Niekerk from South Africa addressed the audience on “*Amende honorable and ubuntu: An intersection of ars boni et aequi in African and Roman-Dutch jurisprudence?*”

An historical approach was followed by Professor Pia Letto-Vanamo (Finland) whose paper was entitled “The relation between law and justice. A historical approach” and Professor Warren Freedman (South Africa) who addressed the audience on “Acquisition of ownership by means of *alluvio* in light of section 14 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008”.

On the second morning, there were two parallel sessions, one on contract and the other on family law. The first participant in the contract-law session was Professor Pascal Ancel (Luxembourg), speaking on “‘Révision pour imprevisión’ – The effect of

change of circumstances on a contract in French and Belgian law: A historical approach”. Professor Irene Kull from Estonia followed with a paper entitled “The realisation of the idea of equity and fairness through general principles – historical experience of Estonia in reforming private law”. Professor Lulu Hawthorne (South Africa) then addressed the audience on “The origin of public policy as a ‘*Generalklausel*’ in South African contract law”. The session was concluded with the papers of two of our younger speakers: Ms Hanri du Plessis from South Africa (“The unilateral determination of price in South African law with specific reference to Roman law”) and Mr David Auer from Austria (“Similarities and differences in the codification process in Austria and in France”).

In the parallel session on family law Professor Thomas McGinn (United States of America) was the first speaker, addressing the audience on “The *ars boni et aequi* and gender equity: The case of the *lex Julia* on adultery”. The paper of Professor Marita Carnelley from South Africa was titled “The consequences of adultery in the South African and English legal systems: A comparative legal historical study”, and she was followed by Professor Emese von Boné from the Netherlands speaking on “The grounds of divorce in the French and Dutch Civil Codes and its historical development since Roman times”. It was unfortunate that Professor Mircea Bob Dan from Romania could not deliver his paper on “Article 684 of the former Romanian Civil Code, or how to skillfully satisfy the surviving wife”, having been misinformed about South Africa’s visa requirements. Professor Rena van den Bergh (South Africa) filled his slot on the programme with her address “Does the aedilitian edict constitute just and fair law?” The session ended with another interesting picture of Roman family law presented by Ms Annalize Jacobs (South Africa): “The double picture of Roman sexual mores”.

In a criminal-law session Professor Shannon Hoctor (South Africa) spoke about “The development of the crime of arson in South African law” while the paper of a South African colleague, Mr Freddy Mnyongani, was entitled “*Vox populi* and the trial of Jesus: A Roman law perspective”.

Two divergent papers were presented by Professor Franciszek Longchamps de Bériér (Poland) and Dr Sira Dambe (South Africa). The first was entitled “The status of a carrier of rights within the European legal tradition. A Roman and Jerusalem case-study”, while the second moved into the field of literature and the law addressing “Outposts of Justice in JM Coetzee’s *Waiting for the Barbarians*”.

The papers presented on Wednesday morning were those of Professor Fabiano Correa from Brazil on “*Ius est ars boni et aequi*”, and that of Professor David Pugsley of England entitled “Did Bluhme realise that his tables were right but his history was wrong?” The parallel session dealt with land issues with the paper of Professor Eva Jakab (Hungary) on “Ownership on agrarian land: An unlimited right?” and the address of Professor Ditlev Tamm (Denmark) on “With law the land shall be built”.

Professor Philip Thomas from South Africa opened the last session of the Conference with his paper on “The origins of legal argumentation”. Dr Paul du Plessis (Scotland) followed with “*Ius est ars boni et aequi* – or the trouble with Roman legal definitions”. In the parallel session two papers dealing with Roman-Dutch law were delivered by South African colleagues Professor Andrew Domanski (“Fundamental principles of law and justice in Johannes Voet’s *Commentarius ad Pandectas*”) and Ms Liezl Wildenboer (“Schoemansdal: Law and justice on the South African frontier”).

Opening address of the Conference

Dear colleagues and friends

It is my pleasure and privilege to welcome you to this sixth international conference of our society, in this special venue and with distinguished delegates.

Many of our presenters have travelled from abroad and bring with them international renown. I cannot boast that we have representatives from Austria all the way down to Zimbabwe, but I have counted delegates from fourteen letters of the alphabet, but this, of course, depends on which language you use.

In addition, we have a significant number of – what I shall call for want of a better word – repeaters, which unfortunately has a bad connotation in academic circles! In this context, however, it is used to indicate that they have visited South Africa before, and we thank professors Winkel, Correa, Kasai, Matsumoto, Pugsley, Tamm and Du Plessis for their attendance and hope their fond memories of our past conferences or their visits are reinforced.

I want to use this opportunity to briefly address two topics concerning the bond that brings us together, namely legal history.

Firstly, we are privileged to live in the empire of the law.

It would be anachronistic and hubristic to assert that we as lawyers are the priests of legal science, but on the other hand to be just the slaves of the law leads to simplistic positivism. It remains my considered belief that historical research is a *conditio sine qua non* for proper understanding of law, in spite of the fact that it is widely held to be superfluous by those who advocate the unquestioning application of legal rules. Thus legal historians are the critical participants in constructing the empire state building of legal science, but on occasion we may be the necessary deconstructionists of wonky structures.

The second aspect concerns the relationship between the present crises – economic and political – and the diminishing role of the liberal arts in education.

A former governor of the American Reserve Bank, Volcker, has attributed the origins of the present woes in the United States to the fact that during the 1980s in American corporations the power shifted from the engineers to the moneymen with MBAs.

I would like to add that before the rule of engineers, corporations and countries were entrusted to graduates in the humanities. However, the pull of professional training at the expense of the humanities has been a global phenomenon.

As we are gathered here, now, we are in a so-called BRICS country – Brazil, Russia, India, China and South Africa. In one member country of this bloc, China, a reverse trend has been noticed recently. In the business section of TIME Magazine of the first of October 2012, Austin Ramzy reported from Beijing, under the title “A new school of thought in China”, that science and engineering are not enough.

Two factors are promoting a renaissance in the liberal arts.

First, some circles in China blame the utilitarian bent of the higher education system for widespread corruption and fraud. A vice-president of Fudan University in Shanghai stated that “highly specialised education often ignores ethical, cultural and moral

values” and “along with a lack of humanity, some students are missing a sense of social responsibility”.

Secondly, China’s Education Ministry, universities and educators are starting to realise that traditional professional training is not giving students the analytical or problem-solving skills needed to meet the future. To stay competitive, the next generation of Chinese students will be marching into the future armed with a liberal-arts degree.

Chairman Mao is on record as saying that “China will still need universities, and by this I mean science and engineering universities”, and subsequent economic reforms in China have continued to stress technical skills. Nevertheless, in 1998 the Ministry of Education allowed universities to begin small liberal arts programs, and now more than fifty Chinese universities are experimenting with liberal arts components. In China the expression liberal arts, *ziyou jiaoyu*, has connotations of democracy and freedom and is avoided and replaced with generic titles such as general education or cultural quality education.

The TIME article spoke of a Chinese student who had achieved a decent score in the *gaokao*, the examination stretching over several days, which determines where Chinese students will go to university and what subjects they will study. However, her results were not good enough for admission to engineering or science studies and she consequently ended up at the Xing Wei College, a new liberal arts institution in Shanghai established in 2010. She plans to study business, history, mathematics, literature and science, arguing that the world is multifaceted and people need wide knowledge. However, her family are concerned that in the job market she will not be able to compete with engineering or science students.

The article in TIME concludes that in China attitudes towards a liberal arts degree are changing, and I wish this development the same success as their manufacturing industry, as in the long term it may inject new life into the liberal arts and our disciplines.

I conclude expressing the hope that you will all have a pleasant and memorable conference.

Participants’ remarks

“A wonderful conference! The scholars who attended represented a wide variety of legal systems and each contributed something unique. All the papers were interesting and stimulating, and the question sessions interactive, yet friendly and accommodating ...

The Conference turned out to be a wonderful opportunity for younger academics to network and present their research. As a young academic, I was extremely nervous of presenting my research to experts in the field, but it turned out to be a positive experience. The criticism I received was constructive and I learned much from listening to my colleagues’ papers ...

I went to Kwa-Maritane feeling very anxious about the fact that I was going to present my paper to many acknowledged legal historians from across the globe. Right from the opening session by Professor Philip Thomas, it became clear to me that despite their

accomplishments, the esteemed scholars were warm-hearted and humble people, driven by their love and passion for research. With this assurance, my nerves were calmed and eased into a conference mode! Throughout the conference, the excitement and the enthusiasm with which we young researchers listened to them, was also reciprocated when it was the turn of experts to listen to our presentations. We received constructive feedback, were encouraged and even cajoled into exploring certain aspects of our papers further. This, I for one appreciated immensely ...

The interactions and deliberations both at the parallel sessions and at meals were very interesting and at times a bit overwhelming for one like me. The sad feeling I had though, was that the conference was taking place at a time when legal history in general and Roman law in particular were becoming endangered species in most universities around the world, South Africa being no exception. Exciting as the conference may have been, there was also a sense that the Kwa-Maritane conference, at least from the South African point of view, was the beginning of a requiem for both legal history and Roman law. Currently, there are very few universities in South Africa which offer these subjects, and if reports are anything to go by, more universities are poised to discontinue offering these subjects

An extremely well organised international conference, anchored to a beautiful and inspiring landscape. The high level of erudition and consummate scholarship displayed by several speakers and the interesting variety of topics across the sessions created the perfect backdrop for lively interchange, apt observations and learning opportunities. An unforgettable academic experience ...”

**Professors Philip Thomas, Rena van den Bergh
and Gardiol van Niekerk**