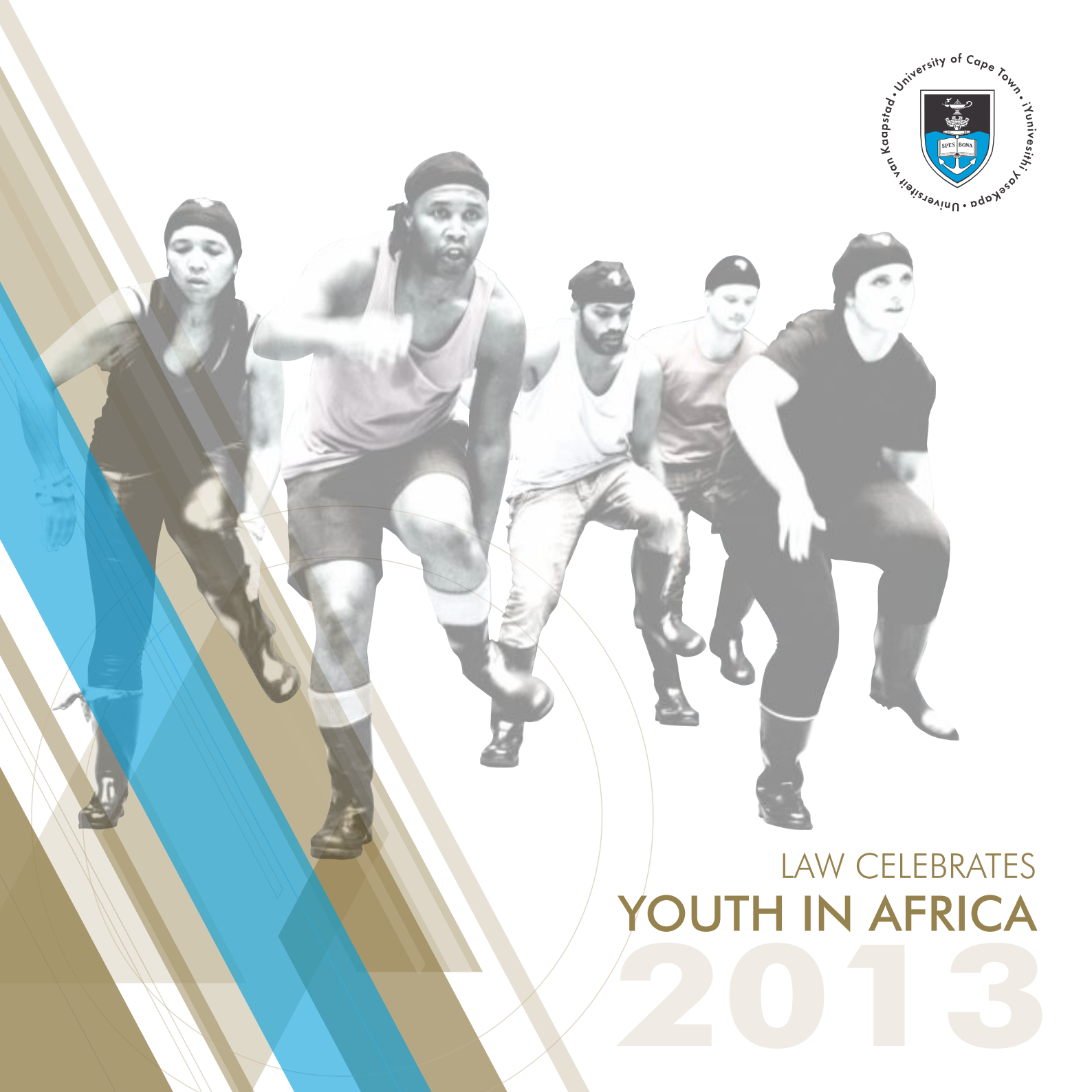

University of Cape Town • iYunivesithi yaseKapa • Universiteit van Kaapstad

LAW CELEBRATES YOUTH IN AFRICA 2013

THE CHILD

INGRID JONKER

Zulu translation commissioned for Drum, May 1963

Umtwana akafile
Umtwana ophakamisa isandla esiphakamisela unina
Omemeza athi Afrika! memeza umoya
Wenkululeko wasemaphandleni
Nasezikompulazi ezibiyelwe

Umtwana uphakamisa isandla sakhe esiphakamisela uyise
ekunyatheleni kwezizukulwane
ezimemeza zithi Afrika! memeza umoya
wokulunga negazi
ezindleleni zokuziqhenya kwakhe

Umtwana akafile
akafanga eLanga akafanga eNyanga
akafanga eOrlando noma eSharpeville
noma eshantshi yamaphoyisa ePhilippi
lapho elele khona nenhlamvu esiphongweni

Umtwana usesithunzini esimnyama samasosha
agade ngezibhamu, namasaracen kanye nemishiza
Umtwana ukhona kuyoyonke imihlangano nemithetho
Umtwana ulunguza ngamafasitela ezidlini
kanye nasezinhliziyweni zawonina babatwana
lomtwana owayelangazelela ukuzidlalela elangeni eNyanga
ukuzozonke izindawo; umtwana osekhule waba
yindoda uhamba kulolonke elase Afrika
Umtwana osekhule waba yindlondlo yesiqhwaga
usemhlabeni wonke jikelele

Engadingi ipasi

CONTENTS

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Message from the Dean

Many of you commented on the visual impact of last year's Law Review, and our celebrations for Africa Day 2013 have given us similarly stunning pictures this year. The theme was *Youth in Africa* and it was a fabulous showcase of talent from young academics' scholarly input to poetry, both iconic and original, music performers, again both timeless and unique, jamming, breakdance, *Azonto*, and the student-staff gumboot combo that won first prize.

Inaugural Sino-African Law Deans' Conference

Kramer was transformed that meridian, with the smells and tastes of the Cape enhancing the overall experience. But in another significant way, Kramer continues to transform. A comparison of the demographics of our LLB cohort in 2009 and 2013 shows a 78% increase in African South Africans from 75 to 134. Another comparative demographic is the substantial rise in staff with PhDs, from 26% in 2009 to 50% in 2013. The number of NRF rated researchers has risen from 15 to 20, the new LLB curriculum is in place and isiXhosa is now a final year elective.

As many of you know, UCT is ranked in the top 100 according to the QS World University Rankings for eight of its subject areas, including Law. 'Our' DVC, Prof Visser, comments: "The methodology of the QS survey relies heavily on a global survey of what academics and employers think of a particular university (50%). One would expect that a university in the global south would not do particularly well in such surveys, since most of the respondents are probably from northern countries. It is therefore most pleasing that UCT's work has registered sufficiently internationally to

be placed in the top 100 for eight areas (and in the top 200 in 19 different areas)".

"The surveys are complemented by three other measures: the citations per faculty as indicated by SciVerse Scopus (20%), the staff-student ratio (20%) and the degree of internationalisation, measured by the proportion of international students (5%) and the proportion of international faculty (5%). Since UCT's research impact is above the world average in many areas and because we have a very good proportion of international students, these indicators would tend to boost our scores. As always, we are mindful that this is just one view of the cathedral, but we are very pleased about this renewed confirmation of the value of our work," says Visser.

Staying with internationalisation, as Dean I have had the pleasure of attending two of the Global Law Schools League's forums and look forward to hosting the 2015 event in Cape Town. We have established links with academic institutions in Brazil, India and China and hosted the inaugural Sino- African meeting of Deans in March (picture opposite). The Centre for Comparative Law in Africa has established projects in West, Central and North Africa.

This Faculty continues to surprise me, and I hope you will enjoy this edition and its coverage of many of the things that have been said and achieved over the last year. From a personal point of view, I look forward to the two-year extension of my deanship which is made easier by your support. Several examples stand out - the enthusiastic turnout again for the December alumni luncheon, the social responsiveness of local alumni and their firms in offering all the Intermediate years the chance of vac work, but biggest of all has to be the *Law 150* campaign and the fact that we exceeded our target within the five years.

Law 150 is held up as THE success story within UCT, and on two counts. It is an endowment fund which is regarded as the most difficult to raise money for and it is an almost solely an alumni based campaign.

So thank you, and thank you from current and future staff and students who benefit from scholarships (56 this year) and day-to-day support when crises hit, for development programmes and with resources for the library.

We will celebrate you all in December at the unveiling of the Roll of Honour which will be engraved on the doors of the new Postgraduate Research Commons.

Best wishes,

PJ Schwikkard

PUBLIC LECTURES

Employment: A dodo, or simply living dangerously?

Inaugural Lecture

Professor Rochelle Le Roux, February 2013

Whether a modification of dismissal law constitutes a limitation of the constitutional right or is a limitation that can be justified will turn on how a court gauges the nature and extent of the constitutional right. Elsewhere I have argued that the right should be developed to include practices that do not originate from an employment relationship, but still impact on the ability of individuals to work, whether in employment or otherwise. (Le Roux 2012) However, for the purposes of my argument tonight, I wish to focus on a different aspect of the right.

Section 23(1) of the Constitution provides that 'everyone has the right to fair labour practices', but hitherto the word 'everyone' has generally not been interpreted to mean 'everyone'; rather, 'everyone' is seen to include only active participants in the labour market, such as workers, trade unions and employers, but not the unemployed and certainly not the general members of society. (Brassey 2012) However, if the word 'everyone' is indeed given a broad meaning, the fairness or otherwise of a labour practice will have to take account of both the interests of workers and employers and societal interests, such as 'health and safety, the environment, the community and the economy' and also the suffering associated with unemployment. (Cheadle 2006) In fact, the LRA already gives expression to this sentiment, although it might be slightly hidden: the scope of retrenchment law is such that it recognises that there comes a point where the need to maintain production justifies dismissal. Even in the context of the right to strike, seen by many as a divine right, the LRA recognises that there comes a time when employees, despite striking legitimately, can be dismissed in order to maintain production. And only the interests of society can explain the limitation of the right to strike in the context of essential services.

Once this construction is accepted, an inquiry into whether a modified dismissal law amounts to either a limitation of the constitutional right or a limitation that can be justified will hinge on the extent to which it can be shown that current dismissal law in fact inhibits societal interests such as employment and the economy. In the case of South Africa, there are credible arguments by my colleagues Benjamin, Bhorat and Cheadle (2010), based on the

The coverage of the various public lectures has to be by way of extracts; the full text is however available from Pauline.Alexander@uct.ac.za

interpretation of surveys run by the World Bank, that employers are alienated by the actual or perceived rigidity of legislative provisions on the hiring and dismissal of workers. Other studies confirm similar employer concerns. Admittedly, we do not yet fully understand precisely what aspects of dismissal law trouble employers the most and more in-depth research will be required in order for us to understand all the nuances. However, for the moment, the question is whether there is any constitutional space for the alleviation of such rigidities, real or perceived.

Disregarding political agendas, I believe that there is constitutional scope for the modification of at least some aspects of dismissal law. The reasons listed in the LRA as unfair reasons for dismissal were basically derived from the 1982 ILO Termination of Employment Convention and, in my view, provide adequate assurances for the stable employment that I referred to earlier, and I do not propose that these provisions be altered. However, without suggesting that it is the only way, and excluding discriminatory dismissals, the remedies for unfair dismissal could provide a useful starting point for moderation.

The Convention, which incidentally has never been ratified by South Africa, is silent on the remedies for unfair dismissal, and the remedies provided for in the 1995 LRA are therefore truly South African. Initially, compensation for ordinary unfair dismissals was intended to be capped at a maximum of six months' remuneration. (Explanatory Memorandum to the Draft Labour Relations Bill, 1995) How different things could have been! Following a deal during the final negotiation of the 1995 LRA, the primary remedy for ordinary unfair dismissal is now the rarely ordered reinstatement, or alternatively, compensation capped at a maximum of 12 months', rather than six months', remuneration:[1] Certainly a victory for labour, but did it not clip the wings of the dodo?

In practice, compensation orders on average seldom exceed four months' remuneration. (Benjamin 2012) The amendment proposing that higher income employees be deprived of the protection of dismissal law upon the payment of three months' remuneration in the form of notice pay thus gives practical expression to this average. But why limit this approach to higher income employees? At this stage I should declare that I am interested in the three- to four-month limit not because it is the CCMA average. I am interested in this limit because it exceeds the security offered by the common law and exceeds the extent of the security offered by modern work, but, importantly, it more than halves the inhibiting severity, real or perceived, of the current model.

The focus on reinstatement and its proxy in the form of 12 months' remuneration were negotiated at a time when most of us still laboured under the false impression that standard, indefinite employment is the norm. The drafters of the LRA can be forgiven for this: at the time 'the world of work was still young and the full impact of globalisation and the forces that would come to reshape the labour market... Had not yet taken their full effect in the South African labour market'. The Decent Work Agenda of the ILO, perhaps an early precursor of changes to come, had not even been formulated at that time. (Le Roux 2012) If we can accept, as we must, that standard, indefinite employment is now a rarity, then we must rethink a compensation regime that serves as a surrogate for indefinite employment.

Even for those prepared to step away from conventional wisdom, this line of thinking might simply be too radical. But is it really?

Assuming that no self-respecting constitutional democracy will ever abandon the most vulnerable, provisions will always be in place to protect them. So what is going to change?

Other than moderating dismissal law and re-defining the basis for trade union membership and accommodating broader workplace communities, labour legislation will basically continue to operate in the same way as before: Unfair dismissals will still be remedied, there will still be strikes pushing the wage deal, equity legislation will continue to drive transformation in the workplace and, because the inequality of bargaining power remains a reality, basic conditions of employment and minimum wages, in the absence of a collectively bargained agreement, will still be underwritten by legislation. What is more, it is not broadly understood that the employer's duty to provide a safe working environment has its provenance in the law of delict and has nothing to do with the contract of employment, decommodified or not.[2]

The duty to provide a safe working environment, backed by a legislative compensation regime, will therefore continue to exist. In other words, it is certainly not a matter of less labour law as is advocated on a bill board near the Cape Town airport. Employment will and must continue to be regulated. The Constitution demands as much. This may even require more labour law.

The challenge is to regulate employment for what it has become and not for what it, very briefly, used to be. Modern employment is not a static event of indefinite duration; it is a buoyant, mobile, but ultimately finite activity that needs to live a little bit dangerously and the task of regulation is to ensure that it remains alert and watchful. When the last dodo finally perished in faraway England in 1681, it was a fat, ungainly bird that could hardly walk, let alone fly.

Notes:

[1] Referred to by Zondo JA *in Kroukam v SA Airlink (Pty) Ltd* (2005) 26 ILJ 2153 (LAC).

[2] *Media 24 Ltd v Grobler* (2005) 26 ILJ 1007 (SCA) [65]-[68].

Freedom of Expression and our Democracy

Claude Leon Public lecture

Justice Z M Yacoob, former Justice of the Constitutional Court of South Africa, March 2013

Justice Jacoob flanked by Claude Leon Chair, Professor Pierre de Vos, and on the right, Edmund Beerwinkel, Juta

It is significant that we did not choose to opt for an unqualified freedom of expression protection. Arguably, this is the only right in the Constitution that contains its own internal limitation. I proceed in this paper on the basis that the expression we are concerned about today does not constitute Propaganda for war or any of the matters mentioned in section 16, subsection (2), for if it did, it would not qualify for freedom of speech protection at all. It is enough to say for now that the extent of the freedom of expression protection will depend to a large extent on the meaning the Constitutional Court might give to the three exclusions in subsection 2: if the subsection is interpreted broadly, the protection afforded by the section will be more limited; If, on the other hand, the internal limitation is narrowly construed, the freedom of expression protection will be more generous.

Subsection (1) could nevertheless have been drafted in open terms, subject only to the qualifications or internal limitation provided for in subsection 2. The question that then arises is why the Constitution provides for specific categories of rights after making provision for a general protection in the introductory broad wording of subsection (1). Is the purpose of the Constitution to limit the protection offered in the introductory provision? I think not. The real purpose of the addition of categories, as demonstrated by the use of the word "includes" is to make it a abundantly clear that the general provision is at least broad enough to include protection of the categories mentioned and also to clarify that the right was both to receive and impart information.

In my view, the inclusion of these categories harks back to our evil apartheid history and the means then used to enforce thought control. I think there can be no debate that the Constitution says to us that there will never be that kind of thought control in our Constitutional order. And it may be well to recall some of the thought control methods shamelessly applied under the pretence of maintaining order or morality during those difficult times.

The first category expressly included for protection is the freedom of the press and other media. Those of us who are old enough to

remember the days when the newspapers and other media were strictly controlled, when newspapers were banned and when any media opposed to apartheid was considered a threat to the heinous system was ruthlessly suppressed. It is precisely on account of this history, in my view, that the protection of the press and other media is expressly included.

And academic freedom and artistic creativity were in the same manner vulnerable. The content of education at academic institutions was strictly controlled. Any teaching at the institution that I attended that was even slightly critical of the apartheid scheme was disallowed. And I vividly recall going to plays in Durban that aimed to demonstrate the evils of one or other aspect of apartheid whose performance was stopped by the security police. I am sure that most people remember the classic novel "Black beauty". It is a delightful book about a sensitive horse and its girl rider. The book was banned, presumably because the responsible control board believed that it aimed at propounding the thesis that black is indeed beautiful - a notion apparently inimical to apartheid.

So, one of the objects of our new constitutional order is to prevent the kind of thought control used by apartheid to preserve itself. But the importance of freedom of expression cannot be measured by the need to prevent thought control alone. Freedom of expression has been held to be essential to human development and to our own humanity itself. Every human being has the right both to receive and impart information. The receipt of information is crucial to human beings learning, growing, understanding, changing, thinking, agreeing or disagreeing. In this process, we learn to know and understand ourselves, our relationships with people around us, and our own morality in relation to that of society as a whole. The right of the media and others to impart information fulfils our right to receive it. But it is quite impossible for a person to receive information without imparting it. Self expression is integral to self-development. But our expression, while helping us grow and change, fulfils the right of other people to receive information that is imparted by us. It must be emphasised that the right to receive and impart information does not mean at all that there is some duty on human beings to agree with the ideas communicated to them. On the contrary, genuine disagreement is the heart of expression that leads to human development and change. Imagine a society in which human beings always agreed with each other. That society would be comparatively stagnant and not conducive to human development. The right to disagree coupled with the right to express that disagreement are also fundamental to freedom of expression.

The other side of this coin is that the right to freedom of expression is not limited to the expression of agreeable ideas. Expression acceptable to the majority really needs no constitutional protection at all. Thoughts that have ultimately resulted in change in society would, when first expounded, have been, in all probability, unacceptable to the majority of human beings. Take the death penalty for instance. About 150 years ago, the majority of power structures in certain civilised western societies considered the death sentence appropriate for the killing of deer and the cutting down of certain trees. The people that first expressed the idea (something we now take as self-evident) that this was too heavy a penalty for the crime, would have been in the minority.

Without this minority expression early on, would we ever have reached the position in which the people on this Earth now are. The death penalty is regarded as cruel, inhuman and degrading punishment by very many, and reserved for the most heinous crime by many other countries. Thankfully, no one would ever suggest today that the death penalty is appropriate for cutting down trees, however valuable those trees might be.

The return of Khulekani Khumalo, zombie captive: Identity, Law, and Paradoxes of Personhood in the Postcolony

Rabinowitz Visitors

Professors John and Jean Comaroff, Harvard University, March 2013

Not only is imposture especially widespread in South Africa, but fascination with artful self-production seems to be embedded in the national psyche. In his 2008 novel, *Impostor,* Damon Galgut probes the unsettling qualities of identity in the South African present, a time of "ferment," when places are renamed, maps reprinted, and landscapes made unreadable. It is a time of liberated possibilities and unprecedented deceits, in which all signs are suspect and nobody is quite as they appear: Flipping false assets, operating under aliases, peddling simulacral identities are all commonplace.

David Coplan sees *maskanda* as part of a larger category of African *'*identity practices*'* that were born *'*on the road,*'* in the restless journey between country and city, peasantry and proletariat, past and present. As the century progressed, *maskanda* evolved in symbiosis with the cultural mix of urban working-class life. While it would acquire a more formal identity as *'*Zulu traditional music*'* during apartheid, in the postcolony it displays renewed vitality, shedding conservative, parochial connotations to resonate with consumer-oriented urban audiences, and ethno-modern identities. As such, *maskanda* has acquired intensified heft as heritage capital, as intellectual property, in a climate in which the sale of culture has replaced the sale of labor in many communities. Successful *maskandi*, the ghosts of workers past, can bring in serious money. Khulekani Khumalo seems to have perfected a cross-over style that offered slick 'tradition' for the city listener and an ethnicized urbanity in the countryside. His popular CD's and videos, whose themes range from a nostalgia for migrant life to a faith in God as ultimate Provider, feature him in range of syncretic costumes – often hip jackets made of cowhide, set against the *'*wild*'* landscapes of a synthetic *'*Zululand.*'*

It was this compelling persona to which aspired the John Gcabashe identified by the police. His own biography had been rather different. Having dropped out of school in Grade 3, he had had a checkered career, much of it on the wrong side of the law. According to his brother, he was given to 'mischief,' frequently involving impersonation, especially where money was involved. Whether or not he is who he claims to be, he is able to play plausibly enough to impersonate Khulekani, as an admiring female prison warder told us in Vryheid.

The genre, after all, was integral to everyday existence in many KwaZulu-Natal communities, braided into their kinship reciprocities; *maskandi* were often held to bequeath their gift to successors. Khulekani had learned his signature style from his father, a fact that might have facilitated the belief that Gcabashe was a reincarnation of sorts - thus to open an imaginative space for his imposture. As we have noted, the counterpoint between criminal and artistic performance is not all that unusual. Other successful *maskandi*, like some US hiphop artists, have had prior careers as hoods. What is more, the genre itself seems oddly appropriate to imposture. Kathryn Olsen, a local ethnomusicologist, observes that "impersonation fits well with *maskanda*, [that] many musicians put on identities in performance as a way of claiming something lost, giving authenticity not only to the music but to who they are." Even, it appears, at the risk of crossing the line between the licit and the illicit. In one remarkable twist to our story, a music producer was accused, in March last year, of "stealing" a 12-song CD by one Mpilo Mtungwa. He had, it was said, reissued the disk under the *joint* names of Khulekani and Gcabashe, the deceased and his *doppelganger*, a highly inventive, profitable counterfeit that depended on a meta-imposture at the intersection of the life, death, and resurrection of Khulekani.

The album was said to be selling widely. Thus does identity imposture become a labyrinthine, layered, recursive practice, woven deeply into the contemporary fabric of South African economy and society. Indeed, as Damon Galgut suggests, in the age of deregulation, dissembling everywhere becomes the art of the possible. Adds law and economics theorist, Richard Posner, speaking more generally, "[c]reative imitation is not just a classical or Renaissance legacy; it is a modern market imperative." All the more so, it seems, in African postcolonies, where the line between the criminal and the creative is gossamer thin. Which is why postcolonial self-fashioning rides so heavily on impostures of various kinds.

Legal Education in an era of Globalisation and the challenge of development

Inaugural Sino-African Law Deans' conference

Professor Muna Ndulo, Cornell University, March 2013

Prof Ndulo (left) with Deans Schwikkard (UCT) and Han (Renmin)

The development challenges in Africa and other developing countries are such that these countries need well-trained lawyers who understand the role of law in the development process and law's transformative capacity. This means legal education should not only teach knowledge of law but should promote an awareness of the economic context, business knowledge, and management and acquire skills in communication, negotiation, presentation, project management and develop an intercultural awareness and how to use law to promote development. The traditional system of legal education in Africa produces lawyers trained to become legal technicians. They are encouraged to have little or no interest or comprehension of the policy issues inherent in the law. They are generally reluctant to criticize current law. Even as technicians they

have limits, for few are competent to represent national and commercial interests in international transactions involving complexities of taxation and international finance. Geo Quinot criticizes legal education in South Africa as: "emphasizing narrowly construed 'private' subjects in the training of law students; and of having an aversion to the teaching of policy matters as part of the law syllabus".[1] He argues for a substantive vision of law, involving an obligation to engage with moral and political values in adjudication. Africa needs lawyers with the technical competence to do a first-class job in negotiating a contract, understanding international banking, drafting papers for international loan transactions or large infrastructure contracts and structuring institutions that strengthen governance structures and promote development. At present, most African governments turn to outside lawyers for complex international transactions. The legal problems of financing huge enterprises are far more complex than the legal problems of borrowing from banks or traditional private sources. Good legislative drafters and good lawyers properly trained in international concessions agreements can move the wheels of progress, while narrow, pedantic, unimaginative, and ill-trained lawyers hinder much-needed development.

Courageous and imaginative lawyers can help achieve political stability in a multi-cultural society by helping design viable political institutions.[2] International and comparative lawyers can likewise assist the country in moving toward both regional cooperation and integration and cooperation on the wider international scene. As such, lawyers in developing countries face challenging tasks not present in the more economically advanced nations.[3] African lawyers are expected to relate legal institutions, as well as social and political institutions, to the general and specific premises of expansion and development. To do this, a lawyer needs a broadly based education to enable adaptation to new and different situations as his or her career develops, an adequate knowledge of the more important branches of the law in both its principles and its international dimensions, and the ability to handle facts both analytically and synthetically. He or she needs the capacity to work not only with clients but also with experts in different disciplines. He or she must likewise acquire a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude toward, appropriate development and change. How, then, can the quality of lawyers be improved to cope with these challenges? Universities and law schools need more imaginative degree programs. For example, more international and comparative law courses and research-oriented courses can enable graduates to conduct independent research on the tasks they face in practice and to write meaningful and informative papers for use by those charged with decision-making. African law schools must seek to teach not only law as it is, but also its development and its international context. The foundation year should include a course that exposes students to ideas and concepts in international law as well as comparative law. The objective should be to expose students to other legal systems in the world and to international legal norms.

Schools should also have a place for perspective courses such as the sociology of law, and law and society. Clinical legal education as part of the curriculum at African law schools could provide an enriching and significant component of the law school experience.[4]

Notes:

[1] Geo Quinot, Transformative Legal Education, Inaugural lecture, Stellebosh University, September 2011.

[2] See Carrington, supra note at 59-60

[3] *See* L.C.B. Gower, *Foreword* to Robert B. Seidman, *Source Book Of The Criminal Law Of Africa*, vi (1966).

[4] See generally Jessup, supra note.

A Fond Kiss: a Private Matter?

Ben Beinart Memorial Lecture

Professor Hector MacQueen, Edinburgh University, April 2013

l-r Profs MacQueen and Hutchison chat in the Common Room before the lecture

Between 1806 and 1820 at least eleven editions of Burns' letters to Clarinda were produced, in Ireland, London and the USA.[1] The collection must have been so well-known that from 1820 on it began to be reprinted and sold in Scotland without any apparent legal check or hindrance,[2] even though Clarinda was still alive - she finally died in 1841, aged 82. Whereupon her grandson trumped the market by publishing in 1843 not only the Burns letters but also the Clarinda side of the correspondence.[3] The matter of family scandal and shame had become one for family pride - and, no doubt, financial gain. I have explored elsewhere how Hume and Bell analysed the law in their subsequent writings, and the gradual failure of the *actio iniuriarum* analysis in the nineteenth century in the face of growing acceptance of the limited property rights approach to unpublished correspondence.[4] In the twentieth century the discussion was superseded by the expansion of copyright law to cover unpublished as well as published material.[5] The idea of family personality rights gained ground in *Walker v Robertson* in 1821,[6] where the surviving son of a deceased person was awarded solatium of £100 for hurt to feelings arising from the defamation of his late father; but doubt was cast on the authority of this decision by the Second Division of the Court of Session in 1904, and the law remains unclear.[7] Perhaps the current revival of interest in personality rights in Scots law will lead to clarification or a return of some of the older ideas in this area.[8]

The only question left is, to what if anything did Clarinda consent with regard to the letters, especially after Burns' death in 1796 and the rapid growth of the Burns cult in the years that followed? She certainly realized the value of possessing the letters from early on. In 1791 Burns wrote to her, saying, presumably in response to some comment on her side, 'How can you expect a correspondent should write you, when you declare that you mean to preserve his letters, with a view, sooner or later, to expose them on the pillory of derision, and the rack of criticism? This is gagging me completely, as to speaking the sentiments of my bosom…'[9] Clarinda indignantly refuted him: 'In an impassioned hour I once talked of publishing them, but a little cool reflection showed me its impropriety: the idea has been long abandoned.'[10] But perhaps the lady did protest too much, then and later. We have seen how, perhaps naively, she allowed would-be biographers of Burns post-Currie to have access to the material. There are hints in her correspondence with other people after Burns' death that she contemplated publishing the

letters herself - e.g. in 1797, 'I will select such passages from our dear bard's letters as will do honour to his memory and cannot hurt my own fame, even with the most rigid.'[11] In another letter that year she mentions 'the idea of [Burns' letters] affording [her] pecuniary assistance', but then says she gave that up, 'as few would be interested',[12] i.e. she would not make much money from publication. But the huge success of Currie may have changed her thinking again. There was no direct challenge in the 1804 litigation to the claim that she had consented to Stewart's publication, the pleadings for the pursuers simply... question[ing] the possibility of the lady, to whom these letters are addressed, having put them into the hands of a printer, to be laid before the public. They have privately heard [*from Clarinda herself, perhaps?*], that the letters came into Mr Stewart's hand for no such purpose, and with no intention of publication: and that he took advantage of the power, which an accidental possession gave him, to print and publish them.[13] There is significantly little detail here about how Mr Stewart came into his 'accidental possession' or the 'purpose' with which the letters were handed over to him. Also of interest in this regard is the offer in the anonymous introduction to Stewart's edition: 'Should any person suspect that [the letters] are not the genuine productions of the Bard, he may have his doubt removed by applying to the Publisher, in whose possession the originals are permitted to remain for one month after publication.'[14]

Such a claim would have been difficult to sustain without at least some acquiescence from Clarinda, although perhaps Stewart had confidence that she would not wish to reclaim the letters publicly from him, and he would meantime have made his profit. So there is something of a mystery about the beautiful Clarinda's real role in the publication of her lover's letters. Like the nature of the intimacy she and Burns enjoyed in Potterrow in early 1788, this is likely to remain for ever unresolved. Bell's comment in his memorial - 'she is safe from all obloquy; *stat nominis umbra*; she is concealed under a veil of impenetrable mystery'[15] - might almost, if not quite, serve as her epitaph. Perhaps it is appropriate to finish in the Canongate Kirkyard, just off the Royal Mile in Edinburgh. There Agnes McLehose lies buried, her grave alongside that of the cousin who may have done more than anyone else to save and protect her reputation in 1804, William Lord Craig, Senator of the College of Justice. Overshadowing them both from the north, however, looking down from the Parnassus that is Calton Hill, is the Edinburgh monument to Robert Burns.

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Notes:

[1] Lamont Brown (n 6) 257 gives a list.

[2] Ibid, noting publications in Glasgow in 1822 and 1828 and in Edinburgh in 1828.

[3] See n 10.

[4] MacQueen (n 64) 40-1.

[5] Copyright Act 1911, s 1; and see now Copyright, Designs and Patents Act 1988, ss 1-3, which imposes no requirement of publication before a work may enjoy copyright.

[6] (1821) 2 Mur 516, sequel to 2 Mur 508.

[7] See *Broom v Ritchie* (1904) 6 F 942; Whitty (n 53) 204; Elspeth C Reid, *Personality, Confidentiality and Privacy in Scots Law* (2010), 10.59-10.61.

[8] Niall R Whitty, 'Rights of Personality, Property Rights and the Human Body in Scots Law' (2005) 9 *Edinburgh LR* 194; *Stevens v Yorkhill NHS Trust* [2006] CSOH 143, 2006 SLT 889

[9] O'Rourke (n 10) 88.

[10] Robert Chambers and William Wallace The Life and Work of Robert Burns (1896) vol 3, 273-4 (quoted in McIntyre (n 6) 283; not in O'Rourke (n 10).

[11] O'Rourke (n 10) 120.

[12] Ibid 121.

[13] Advocates Library Session Papers, Campbell Coll vol 114 no 2, 2.

[14] Letters Addressed to Clarinda (n 5) introduction.

[15] Advocates Library Session Papers, Campbell Coll vol 114 no 2, 19.

In memoriam: Justice Pius Langa

Professor Jaco Barnard-Naudé; (Mail and Guardian Thoughtleader, 25 July 2013)

I

As I write it, I realise that I have chosen the title of this post deliberately, trite as it may be. In memory. Is that not where we are? And what we are in mourning? Memories. And, moreover, of justice. Those who have studied the human psyche, tell us that mourning is the business of memory. In mourning we are in memory - in remembrance of the Other who is irretrievably and irreplaceably lost to us, who is, from now on, for us only to the extent that they are in us as memory. This is, at least according to some, how Justice is done to the Other - in memory.

II

Wednesday. It is a cold and rainy Cape Town morning. I am walking down the corridor of my department at the Faculty of Law, in (my) mourning, I suppose, one might say; in memory, in any event. (Are we not always already in mourning, asks Jacques Derrida, is mourning not simply and in the end survival by another name?) Last night, I dreamt that an important person had died. When I woke up I could not remember who it was that had died in my dream. My colleague who is organising a conference on the judicial legacy of Pius Langa emerges from his office. We meet in the corridor. In the recent past, we have spoken often and at length about the upcoming conference. There is a pause before he asks me whether I have seen that Justice Langa died this morning at the age of 74.

It was on the news. When one learns about the death of a great spirit, of the death of one who one has admired, even revered, one does not want to believe. One does not want to believe that such greatness can depart from the world. And yet, this is the inescapable fate of all physical bodies that temporarily reside, as the Hegelians say, in the Spirit. So we must believe, which is to say, accept and come to terms with the loss. I drift to the office of my colleague in another department. His phone is ringing off the hook.

The press: a sound bite, if you please. We talk about what there is to say; about saying precisely when one does not know what to say. For the sake of memory. About being affected, about being in affect by this death, despite the fact that we did not know Pius Langa personally. On the way back to my office, I am reminded of Derrida's problematisation: is mourning not precisely the grief one feels for the one that one does not know, for the unfamiliar stranger, for the unknowable secret harbored in the heart of every Other, for the unfamiliar in even the one most familiar to us?

III

I do not know how many times I have written a variation, a re-inscription or at least a re-iteration, of the following: The South African transition has been hailed all over the world as an exemplar of peaceful transition from totalitarian to democratic rule. Given that the terms of the transition were directed, from the outset, through the prism of a constitution, United States scholar Karl Klare has termed South Africa's transition 'transformative constitutionalism'. Klare describes this process as in the first place, a long-term project committed to a future of 'large scale,

egalitarian social transformation' 'through non-violent political processes grounded in law'. He envisages for South Africa a transformation "vast enough to be inadequately captured by the phrase 'reform,' but something short of or different from 'revolution' in any traditional sense of the word". In an address entitled 'Transformative Constitutionalism' delivered at the Stellenbosch law faculty in 2006, former Chief Justice Pius Langa located the origin of transformative constitutionalism in the postamble of the interim Constitution and plainly described what he understands transformative constitutionalism to be. Referring to the postamble, he stated: "This is a magnificent goal for a Constitution: to heal the wounds of the past and guide us to a better future.

For me, this is the core idea of transformative constitutionalism: that we must change." "Transformation is a permanent ideal, a way of looking at the world that creates a space in which dialogue and contestation is truly possible, in which new ways of being are constantly explored and created, accepted and rejected and in which change is unpredictable but the idea of change is constant. This is perhaps the ultimate vision of a transformative, rather than a transitional Constitution. This is a perspective that sees the Constitution as not transformative because of its peculiar historical position or its particular socio-economic goals but because it envisions a society that will always be open to change and contestation, a society that will always be defined by transformation."

Langa went on to highlight the massive socio-economic transformations that still need to happen in South Africa, stating that 'the levelling of the economic playing field' is 'absolutely central to any concept of transformative constitutionalism'. He then described a direct link between transformation and reconciliation, stating: "Transformation is not something that occurs only in court rooms, parliaments and governmental departments. Social transformation is indispensable to our society. In South Africa - it is synonymous with reconciliation. If there is no reconciliation between the people and groups of South Africa we will simply have changed the material conditions and the legal culture of a society that remains fractured and divided by bitterness and hate." Langa went on to say that "[t]here is no right way to deal with the immense violation that was apartheid. But, as a society, we must keep alive the hope that we can move beyond our past. That requires both a remembering and a forgetting. We must remember what it is that brought us here. But at the same time we must forget the hate and anger that fuelled some of our activities if we are to avoid returning to the same cycle of violence and oppression."

Memory, then. And the memorial words of a man whose legacy, whose justice (expressed so powerfully in the words above) we cannot afford to forget.

And Tennyson's famous memory poem comes to mind:

Let knowledge grow from more to more,
But more of reverence in us dwell;
That mind and soul, according well,
May make one music as before

IV

At a memorial held for Justice Langa at the Faculty of Law during the lunch hour of 7 August 2013, a student speaks up and tells us that in her language, Zulu, the word 'Langa' means 'Sun'. She tells us that she is sad because it feels like the Sun, the Light, is fading. And I feel like asking, but I don't, 'For what tomorrow, if not for the Sun?'

Professor Ronald Dworkin: An appreciation

Professor Hugh Corder

In February 2013, exactly eleven years since he last visited this country, one of the pre-eminent legal philosophers of the late 20th century, Ronald Dworkin, died in London. There can be few graduates of this Faculty over the past 35 years who are not aware of his work, nor of his influence on South African jurisprudence since 1994. His magisterial early work, Taking Rights Seriously, has been part of the curriculum in Jurisprudence since the late 1970s, and his subsequent books and articles have also been included as readings worthy of debate.

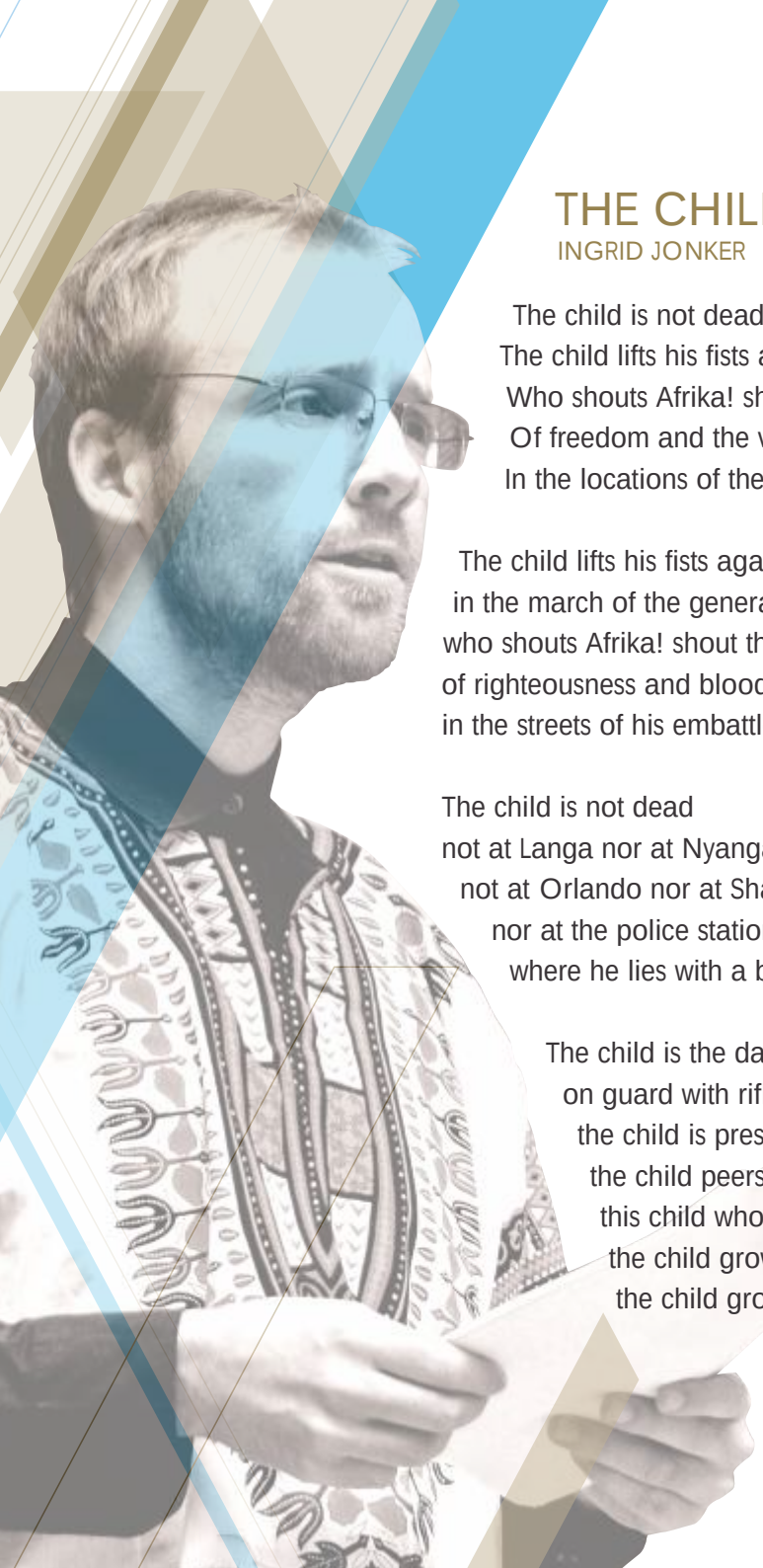
While Dworkin is most closely associated with New York University and Oxford (where he succeeded Herbert Hart as Professor of Jurisprudence), he made three significant visits to South Africa, and taught scores of South African students at Oxford, many of whom have risen to prominence in our legal profession. In his first visit in 1976, he delivered the Richard Feetham Academic Freedom lecture at Wits. In late 1988, Dworkin came to Cape Town informally, as part of his planning of a major event in preparing for the political transition in this country. He met with Dennis Davis and me, to discuss his ideas, and to ask our advice as to who should be invited. The meeting duly took place, with the theme South Africa and the Rule of Law, in Oxfordshire in July 1989, and was attended by members of the ANC Constitutional Committee and then eight serving judges, nine academics and ten practising lawyers from South Africa, as well as several legal luminaries from abroad. It was extremely significant, and served further to bridge the gap between the leadership of the legal profession inside South Africa, and those in exile. But Ronald Dworkin's closest contact with this Faculty came in the form of a three-day workshop focussing on the relevance and impact of his work in this country, and was held at the Faculty in early February 2002. Some of the papers delivered at that event, including a transcript of Dworkin's opening and closing remarks, were published in 2004 Acta Juridica. Those of us privileged to have spent time with Professor Dworkin at that time and subsequently were considerably enriched by this contact, as has the quality of our constitutional jurisprudence been substantially enhanced by his work. We mourn the death of a great scholar, and a warm human being.

Robert Feenstra: An appreciation

Dr. Margaret Hewett, Emeritus Researcher

Em. Prof Robert Feenstra was born in Batavia on 5th October 1920 and died on the 2nd March of this year in Oegstgeest (The Netherlands).

Feenstra was a world renowned academic, researcher and Legal Historian, and South Africa can claim a long, amicable and rewarding relationship with him. This began rather less propitiously in 1948, when the young scholar, already pursuing his research into the ramifications of the Roman-Dutch law, unsuccessfully applied for the chair of Roman Law and Jurisprudence at UCT. This had become vacant on the death of Prof John Kerr Wylie and was filled by a local scholar, Ben-Zion Beinart, already well known as a Romanist and legal authority. Feenstra was not deterred and first joined the University of Utrecht. From 1952 until 1985 he was Professor of Roman Law at the University of Leiden. However, he and Ben Beinart became firm friends and collaborated for many years. The bonds with UCT and other South African universities became ever stronger. Visits and lectures, invitations to study in the Netherlands and eventually recognition in the form of Honorary Doctorates from the Universities of Pretoria (1992) and Cape Town(1994). Feenstra's influence on the world of Legal History and on those South Africans working on many aspects of the Roman-Dutch Law is incalculable. He will be greatly missed.



THE CHILD

INGRID JONKER

The child is not dead
The child lifts his fists against his mother
Who shouts Afrika! shouts the breath
Of freedom and the veld
In the locations of the cordoned heart

The child lifts his fists against his father
in the march of the generations
who shouts Afrika! shout the breath
of righteousness and blood
in the streets of his embattled pride

The child is not dead
not at Langa nor at Nyanga
not at Orlando nor at Sharpeville
nor at the police station at Philippi
where he lies with a bullet through his brain

The child is the dark shadow of the soldiers
on guard with rifles Saracens and batons
the child is present at all assemblies and law-givings
the child peers through the windows of houses and into the hearts of mothers
this child who just wanted to play in the sun at Nyanga is everywhere
the child grown to a man treks through all Africa
the child grown into a giant journeys through the whole world

Without a pass

A Quintet of PhDs

Recent developments related to the principle of equality of States in international law: equality and non-intervention

Hannah Woolaver

Double celebration at King's College for Drs Alistair Price* and Hannah Woolaver, lecturers in the faculty and soon to be man and wife.

Dr Woolaver's thesis assesses the principle of equality of States in relation to the prohibition of the use of force in international law. In particular, it analyses claimed international legal rights of forcible intervention in failed, rogue, and undemocratic States. The principle of sovereign equality of States, enshrined in Art. 2(1) United Nations Charter, denotes that all States possess the full rights of sovereignty, regardless of their political, economic, or social systems. Thus, whatever a State's ideology or character, its territorial integrity and political independence are inviolable, protected by the fundamental prohibition of the use of force in international law codified in Art. 2(4) United Nations Charter. Recent developments in international relations have, however, challenged this inviolability. These developments include the increasing pressure towards international governance to combat international threats, the global human rights project, and the emergence of weak States unable to sustain basic institutions of governance. In order to meet such challenges, various States, international bodies, and academic commentators have asserted rights of forcible intervention in States dependent on their being categorised as 'undemocratic States', 'failed States', or 'rogue States'. In other words, some States are claimed to possess an unequal legal status, limiting their full rights of sovereignty, especially their sovereign rights to territorial integrity and political independence, and the concomitant prohibition of the use of force. Such claims are a direct challenge to the principle of equality of States.

The thesis assesses whether the claimed legal inequality of failed, rogue, and undemocratic States is in fact established in international law. It conducts a thorough survey and analysis of the relevant recent practice of States and international organizations, including: unilateral and collective cross-border uses of force; forcible intervention undertaken in support of rebel or other non-State groups within the territory of a foreign State; recognition practice of States and governments; instruments of, and enforcement action by, international and regional organisations; and international judicial decisions. It concludes that, apart from a small number of limited exceptions, contemporary international practice in fact reaffirms the equal possession by failed, rogue, and undemocratic States of the sovereign rights to territorial integrity and political independence. This in turn reaffirms the validity of the fundamental principle of equality of States in international law.

* For Price's Abstract see p. 28, Law Review 2012

A study of changes and continuities in the organisation and regulation of work with an empirical examination of the South African and Lesotho clothing/retail value chain

Shane Godfrey

Shane Godfrey (r) with his supervisor, Emeritus Professor Johann Maree

Dr Godfrey's thesis uses world-systems analysis, together with the role of modern legal systems, to examine continuities between the early history of capitalism and aspects of contemporary capitalism. The focus of these continuities is the legal forms through which firms organise work and arrange employment, which relates to how labour is utilized and controlled. Once industrialisation gathered momentum industrial capital asserted itself over commercial capital.

The high point was the period of Fordism, which also saw the consolidation of the standard employment relationship and entrenchment of comprehensive labour regulation in developed countries. From about 1970 the Fordist model began to unravel, large corporations decentralised, production facilities were relocated, employment was externalised and casualised, labour regulation rolled back, and huge retailers emerged that play an increasingly important role as controllers of global, regional and local value chains. World-systems analysis allows one to situate Fordism and the more recent period of 'flexibility' in a long-term historical context, and within a wider geo-political and economic development context, in order to better understand how the legal forms of property and contract are able to accommodate but maintain control over different work and employment arrangements to the detriment of labor regulation. But firms take account of labour regulation when restructuring so it is an important influence on the way in which work and employment arrangements are organised.

The methodological approach was broadly deductive rather than inductive. Besides the historical and theoretical framework provided by world-systems analysis, together with the addition of a legal dimension, different sets of secondary literature were synthesized to examine developments with regard to the employment relationship, management control, the legal form of the firm, the changing organisation of work and employment, and global value chains and production networks. All of the above literature was used to develop a set of research questions and informed the empirical component of the research.

Military courts in a Democratic South Africa: In search of their Judicial Independence

Aifheli Tshivhase

Celebrating with his supervisor, Professor Hugh Corder

The new constitutional era in South Africa has brought fresh demands on all institutions of society. The South African military justice system has not been spared. The pressure to transform this system has also been fuelled by a wave of reform of military justice systems in other democratic Commonwealth jurisdictions.

In this thesis, Dr Tshivhase evaluates South African military courts against the basic requirements of judicial independence as interpreted by the Constitutional Court and relevant international bodies. In doing so, he draws on his experience of working in military courts.

Dr Tshivhase concludes that all forums of military justice (including the Commanding Officer's Disciplinary Hearing) do not meet most requirements for judicial independence. Military judges lack security of tenure; financial security; institutional independence on important administrative aspects; and their institutional impartiality is questionable.

He further investigates a suitable model of judicial independence for South African military courts in the democratic era and proposes a new model guided by the following: relevant principles of constitutional and international law relating to judicial independence and the right to a fair trial; emerging foreign trends; and most importantly, military uniqueness and operational effectiveness.

In analysing relevant foreign trends, he concludes that there is a strong movement towards strengthening the judicial independence of military courts and make comprehensive suggestions to ensure a stronger degree of judicial independence of South African military courts.

His conclusion is that military courts at lower levels compare very closely with magistrates' courts, and proposes that the reform of military courts must take that fact into account. He supports the idea of creating an independent structure to deal with affairs of the military judiciary and further proposes that South African military judges should be granted tenure until the age of retirement.

Finally, Dr Tshivhase argues against 'civilianisation' of military courts and suggests that the independence of these courts should be improved by integrating principles of judicial independence into the military set up.

From Sidumo to Dunsmuir: the test for review of CCMA arbitration awards

Emma Fergus

Dr Fergus's thesis seeks to identify the test for judicial review of arbitration awards issued by the Commission for Conciliation, Mediation and Arbitration ('CCMA'). Currently, that test is set out in section 145 of the Labour Relations Act 66 of 1995 ('LRA'), read with the Constitutional Court's decision in *Sidumo & another v Rustenburg Platinum Mines Ltd & others* [2007] 12 BLLR 1097 (CC). In terms of *Sidumo*, section 145 of the LRA has been suffused by the standard of reasonableness, consistently with the right to just administrative action found in section 33 of the Constitution of the Republic of South Africa, 1996 ('the Constitution').

In search of a clear formulation of the test, an extensive examination of South African case law on the subject is undertaken. Thereafter, relevant principles of judicial review in South Africa in the administrative sphere generally are considered. Finally, an assessment of Canadian case law and commentary in this field is conducted. The conclusion to this thesis proposes a revised test for review of CCMA awards.

The principal research findings begin by recognising the significance of efficiency, accessibility, flexibility and informality to ensuring fair and efficacious labour dispute resolution. The implication of this is that the test for review of CCMA awards should not be too exacting. Still, section 33 of the Constitution cannot be ignored and a broader ambit of review may therefore be necessary in certain instances. In fact, to maintain legal certainty, intrusive review may sometimes be crucial. These factors must be balanced when formulating a reliable and practical approach to review of CCMA awards. A key finding of this thesis is that – ostensibly due to the complexity of doing so – the Labour Courts have struggled to apply the current test for review consistently, fairly or predictably.

While South African principles of administrative law offer some guidance in identifying the test more clearly, it is argued that greater clarity remains necessary. Thus, Canadian law is consulted. Canada's legal system is found to elucidate the standard in seven specific ways. From there, it is recommended that section 145 of the LRA be reformulated consistently with the standard of reasonableness, in a manner informed by the Canadian model. It is then proposed that the revised test encompass discrete standards of review applicable to different categories of defect.

The standards advanced range from flexible forms of reasonableness to correctness. By recasting the test in this manner, greater structure is simultaneously lent to it. In conclusion, it is submitted that, were the test proposed to replace the Courts' current attitude to review, a suitable balance between the rights to fair labour practices and just administrative action may be struck.

An analysis of the methods used in the South African domestic legislation and in double taxation treaties entered into by South Africa for the elimination of international double taxation

Tracy Gutuza

The restructuring of the South African Income Tax system since democracy was used as a case study to analyse the methods used to eliminate international double taxation through the lens of the tax policy principles of equity and neutrality.

The theoretical framework used to analyse these methods, when the South African tax system changed from source to residence, was that of considering the equitable basis on which a tax base is chosen; the compatibility of the method of relief with the chosen policy principles of equity and neutrality; and the comparison of inward and outward flows by both residents and non-residents.

The above approach was applied in analysing three identifiable periods, namely the period prior to democracy in South Africa, the period between the years 1994 and 2000, and post 2000. The analysis found that the policy principles of equity and neutrality were not consistently applied to the choice of methods used to relieve international double taxation. Consistent application was undermined by amendments to the Income Tax Act and by the use of anti tax-avoidance provisions to prevent loss to the South African fiscus as a result of an increase in tax planning which resulted from the broadening of the South African tax base.

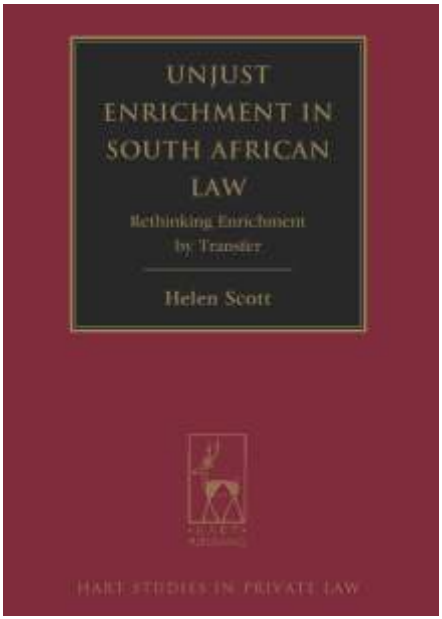
The findings also indicate that although the methods of relief in the Income Tax Act and in double taxation agreements entered into by South Africa reflect the credit system as the default method, the application and quantification of the relief differs.

Dr Gutuza's thesis adds to the body of literature exploring the policy principles of equity and neutrality, as applied in the context of methods relieving international double taxation and in the context of a recently opened and developing economy. The results of the research provide a theoretical basis for future restructuring of the South African income tax system as well as the tax systems of other developing countries, particularly in Africa. They also provide a theoretical basis for considering the policy approach to the taxation of cross border income flows and for choosing the method of relief for international double taxation.

This thesis proposes that equity and neutrality should be the over-arching policy principles when considering the methods applied to eliminate double taxation.

UNJUST ENRICHMENT IN SOUTH AFRICAN LAW

Dr Helen Scott



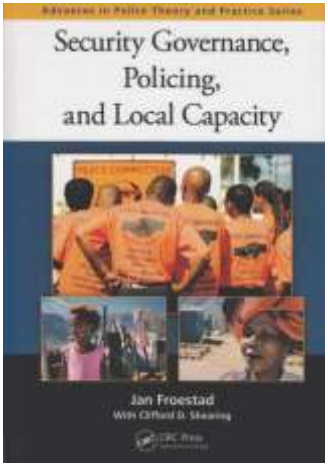
Conventional thinking teaches that the absence of liability – in particular contractual invalidity – is itself a reason for the restitution of transfers in the South African law of unjustified enrichment. However this book, by Dr Helen Scott, argues that while the absence of a relationship of indebtedness is a necessary condition for restitution in such cases, it is not a sufficient condition.

The book takes as its focus those instances in which the invalidity thesis is strongest, namely, those traditionally classified as instances of the condictio indebiti, the claim to recover undue transfers. It seeks to demonstrate that in all such instances it is necessary for the plaintiff to show not only the absence of his liability to transfer but also a specific reason for restitution, such as mistake, compulsion or incapacity.

Furthermore, this book explores the reasons for the rise of unjust factors in South African law, attributing this development in part to the influence of the Roman-Dutch restitutio in integrum, an extraordinary, equitable remedy that has historically operated independently of the established enrichment remedies of the civilian tradition, and which even now remains imperfectly integrated into the substantive law of unjustified enrichment.

Finally, the book seeks to defend in principled terms the mixed approach to enrichment by transfer (namely, an approach based both on unjust factors and on the absence of a legal ground) which appears to characterise modern South African law. It advocates the rationalisation of the causes of action comprised within the condictio indebiti, many of which are subject to additional historically-determined requirements, in light of this mixed analysis.

Dr Helen Scott, with Eric Descheemaeker (a visitor to the faculty in 2012), has also contributed to another Hart Studies edition, *Iniuria and the Common Law.* This book of essays considers in what respects the Roman delict of iniuria overlaps with its modern counterparts in England, Scotland and South Africa.



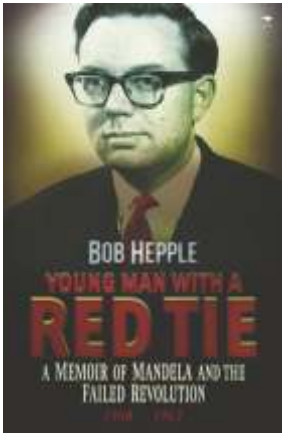
SECURITY GOVERNANCE, POLICING, AND LOCAL CAPACITY. ADVANCES IN POLICE THEORY AND PRACTICE SERIES

Jan Froestad with Clifford Shearing

The security governance of South Africa has faced immense challenges amid post-apartheid constitutional and political transformations. In many cases, policing and governmental organizations have failed to provide security and other services to the poorest inhabitants. Security Governance, Policing, and Local Capacity explores an experiment that took place in Zwelethemba - located in South Africa's Western Cape Province - to establish legitimate and effective non-state security governance within poor urban settlements. There has been, and continues to be, much reticence to endorsing private forms of security governance that operate outside of state institutions within local communities. Those initiatives have often led to situations where force is used illegally and punishment is dispensed arbitrarily and brutally. This book explores the extent to which this model of mobilizing local knowledge and capacity was able to effectively achieve justice, democracy, accountability, and development in this region. Whenever possible, the book includes raw data and a thorough analysis of existing information on security governance. Examining this case and its outcome, the authors provide a theoretical analysis of the model used and present a series of design principles for future applications in local security governance. The book concludes that poor communities are a significant source of untapped resources that can, under certain conditions, be mobilized to significantly enhance safety. This volume is an important examination of experimental models and a presentation of new ground breaking theory on engaging the local community in solving security governance problems

YOUNG MAN WITH A RED TIE

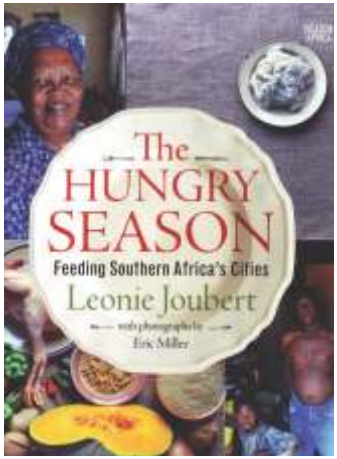
Sir Bob Hepple, Hon Prof



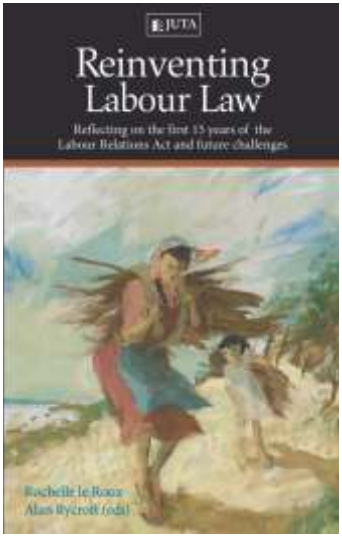
In this memoir of these dramatic events, Bob Hepple throws fresh light on the character of Mandela and other leaders and on the controversies surrounding the emergence of the South African Communist Party and its 'secret' resolution in December 1960 to begin the armed freedom struggle. There is a first-hand account of Mandela's period as the 'Black Pimpernel', his 1962 trial for incitement, and of the Rivonia raid in 1963. Bob Hepple tells his story against the background of the experiences of his childhood and youth in a racist society. These experiences led him – described by a pro-government newspaper as 'a young man with a red tie' – to play a role as a student activist against racial segregation in the universities, an adviser and assistant to the virtually illegal multi-racial trades union, a lawyer defending political victims of the police state, and to a lifetime fighting for human rights.

THE HUNGRY SEASON: FEEDING SOUTHERN AFRICA'S CITIES

Leonie Joubert with Eric Miller



The food we eat is as colourful as the cultures of the people eating it. But why we eat the way we do runs deeper than the whims of our traditions or palates. *The Hungry Season* takes Leonie Joubert, Centre of Criminology researcher, and Eric Miller (photographer) into the lives of people in eight southern African places to trace, in accessible narrative and compelling photographs, the complex undercurrents driving food security in urban spaces: childhood stunting and malnutrition; the shift from traditional 'African' to 'Western' diets; illnesses associated with a modern diet; nutritional literacy, behaviour and choices; large-scale food production and urban food gardens; poverty, joblessness and the layout of the city; supermarkets and the full food value chain; and food wastage. *The Hungry Season* looks at hunger and malnutrition in the city, hidden behind layers of affluence and comfort. It tackles the fundamental question: Why is it that southern Africa seems to produce enough calories and nutrients to keep the region full, satisfied and well nourished, and yet still has so many people living with hunger or the fear of hunger? The book was funded by the Open Society Foundation for South Africa



REINVENTING LABOUR LAW

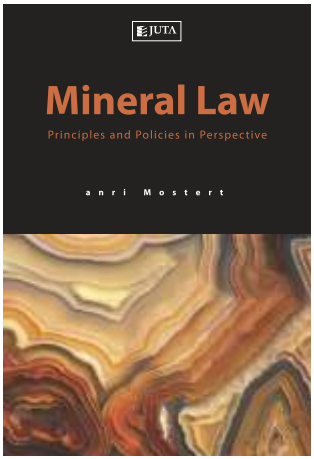
Rochelle Le Roux and Alan Rycroft

The employment relationship has throughout the centuries been one of the most regulated of contracts. This regulation has extended to basic conditions, health and safety, unemployment insurance, dismissals, strike law, and much more. Most regulation reflects the priorities and policies of the government of the day. The Labour Relations Act 66 of 1995 (1995 LRA) was historically a fresh start in a democratic South Africa, an Act harnessed to the Bill of Rights which, for the first time, guaranteed a range of labour-related rights.

This volume of *Acta Juridica* is partly devoted to a critical review of the first 15 years of the 1995 LRA. However, the intention was that the contributing authors should focus on more than the successes and failures of the Act and that at least some of the contributions should have a strong prospective emphasis, exploring the possible future challenges to and solutions for regulating the labour market post-2011. In other words, the editors intended this volume to assist in tracking the future of labour market regulation in South Africa.

MINERAL LAW: PRINCIPLES AND POLICIES IN PERSPECTIVE

Hanri Mostert



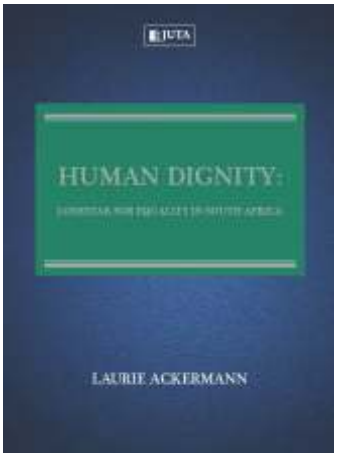
The introduction of new legislation to regulate mineral and petroleum resource development raised questions about whether existing rights to minerals were destroyed and the way was paved for full-scale state ownership of and control over these resources. These issues are not merely academic. They have an impact on political debates around the nationalisation of the mining sector and on the courts' treatment of issues relating to compensation for expropriation. The contexts in which these issues are considered required careful engagement with the law and policy affecting mineral resources.

Professor Mostert's *Mineral Law – Principles and Policies in Perspective* provides a unique look at the content and context of current mineral law. It examines the system introduced by the Mineral and Petroleum Resources Act 28 of 2002 by juxtaposing it with preceding generations of mineral law. These considerations form an important basis from which to examine further questions, such as the constitutionality of the transitional provisions introducing the new mineral law order, its continuity with former generations of mineral law, and the place of the nationalisation debate within this broader setting. The impact of this work on current understanding of Mineral Law was immediately evident. The book is pioneering in that it takes scholarship far beyond conventional interpretation of statutory law and lays a foundation for important policy discussion on issues connected to mineral and petroleum resources.

FISHERIES AND SUSTAINABILITY: A LEGAL ANALYSIS OF EU AND WEST AFRICAN AGREEMENTS

Emma Witbooi

Marine living resources are currently under severe threat from unsustainable use. International law urges a precautionary approach in the use of remaining fish stocks, necessitating rational domestic management of coastal fisheries and requiring foreign nations accessing these stocks to cooperate to this end. The manner in which bilateral fishing relations between the EU and various West African states have historically played out, however, has not followed this route. Dr Witbooi's book is a study of these relations from an inter-disciplinary and contextual perspective with particular reference to sustainability questions using three broad conceptual lenses: common resource management, integration towards sustainable development and the colonial legacy to interrogate the extent to which these interactions operated as legal instruments of sustainability.



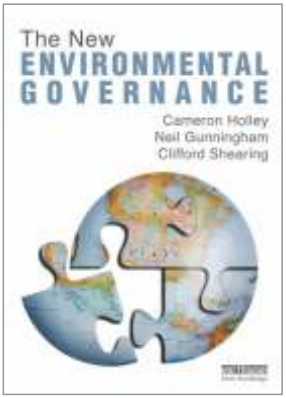
HUMAN DIGNITY: LODESTAR FOR EQUALITY IN SOUTH AFRICA

Laurie Ackermann

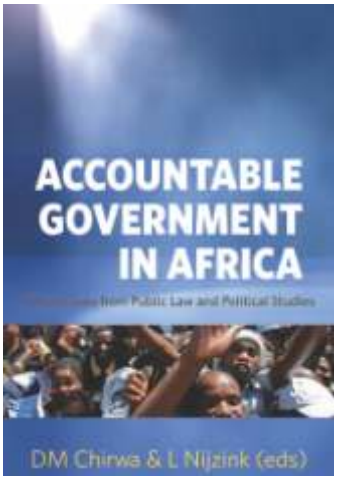
Speaking at the launch of Justice Ackermann's *Human Dignity*, Professor Hugh Corder highlighted the many fine and unique aspects of this immense achievement. 'One of the huge benefits for most readers must be the extensive accessibility of German constitutional material, both in the form of academic critique as well as judgments of the *Bundesverfassingsgericht*. Much of this material is probably available in English for the first time, as Laurie is the translator of almost all of it, and it is bound to make a strong and positive impression on most readers: indeed, this is a deliberate ploy of the author for he states at p 14: "There is a further aspirational purpose to this book. I would feel fully rewarded if it induced even one or two scholars, isolated in the conventional Anglo-Saxon constitutional law bubble, to investigate fully the treasures to be found in German constitutional law." Well, Laurie's initial intention has left its mark at least superficially on me: I will not easily forget for example the delightful onomatopoeia of *Schranken-Schranken* (limiting of limitation), *ubermassverbo*t (excessive use of state power) and *willkurverbo*t (prohibition of arbitrariness). Indeed, and even though I am far from being an expert on German constitutional law, it seems to me that the list of those whose work is discussed must be something of a *Who's Who* of that field: Grimm, Stern, Isensee, Alexy, Kommers, During, Bockenforde, Muller, Sachs and Biskup, and the enchanting Zippelius are names who come readily to mind.'

THE NEW ENVIRONMENTAL GOVERNANCE

Cameron Holley, Neil Gunningham and Clifford Shearing



The New Environmental Governance explores a bold and profoundly new way of governing global environmental problems. It seeks to help overcome the limitations associated with relying on an interventionist state, and its market-based approach to governance, and offer more effective and legitimate solutions to today's most pressing environmental problems. As such, it emphasises a host of alternative characteristics of governance that integrate participation, collaboration, deliberation, learning and adaptation and 'new' forms of accountability. Yet while these unique features have generated significant praise from legal and governance scholars, there have been few systematic evaluations of in practice. Indeed it is still unclear whether it will in fact 'work', and if so, when and how. This book offers one of the most rigorous research investigations into cutting edge trends in environmental governance to date. Focusing its inquiry on some of the most central, controversial and/or under researched characteristics of environmental governance, the book offers fresh insights into the conditions under which we can best achieve successful governance systems.



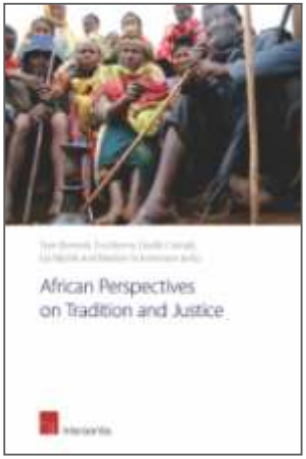
ACCOUNTABLE GOVERNMENT IN AFRICA: PERSPECTIVES FROM PUBLIC LAW AND POLITICAL STUDIES

Danwood Chirwa and Lia Nijzink

The book brings together a number of leading experts in the fields of public law, political science and democratisation studies to discuss problems of accountability, identify ways of making African governments accountable and describe the extent to which these mechanisms work in practice. Thus, it presents new knowledge about legal and political developments in a number of African countries that is relevant to the policy goal of developing and deepening democratic governance and accountable government on the continent. *Accountable Government in Africa* will be of interest to academics, students and practitioners in the fields of public law, public administration, political studies and African studies and anyone who has an interest in developing and deepening democratic governance and accountable government on the African continent.

AFRICAN PERSPECTIVES ON TRADITION AND JUSTICE

Tom Bennett, Eva Brems, Giselle Corradi, Lia Nijzink and Martien Schotsmans



This volume aims to produce a better understanding of the relationship between tradition and justice in Africa. It presents six contributions of African scholars related to current international discourses on access to justice and human rights and on the localisation of transitional justice.

The contributions suggest that access to justice and appropriate, context-specific transitional justice strategies need to consider diversity and legal pluralism. In this sense, they all stress that dialogical approaches are the way forward. Whether it is in the context of legal reforms, transitional processes in post-war societies or the promotion of human rights in general, all contributors accentuate that it is by means of cooperation, conversation and cross-fertilization between different legal realities that positive achievements can be realized.

The contributions in this book illustrate the perspectives on this dialectical process from those operating on the ground, and more specifically from Sierra Leone, Mozambique, Malawi, South Africa, Uganda and Rwanda. Obviously, the contributions in this volume do not provide the final outcome of the debate. Rather, they are part of it.

Mandela the lawyer

Professor Hugh Corder, from an article published in *The Times*,
27th June, 2013 and written with Jeffrey Jowell

Nelson Mandela spent a long period of his adult life in court. Indeed, with the exception of his 27 years in prison, his work as a lawyer and his status as an accused person accounted for the second-longest enduring period of his life. His work as an attorney (solicitor) in Johannesburg provided the necessary platform for his political awakening and his increasing prominence in resisting the injustices of white rule in the period 1942 to 1963.

Nelson Mandela was in many senses a traditional man. He spoke movingly about the 'good old days' when African kings ruled democratically, and South Africa belonged to black Africans, both in name and right. He idealized this history in his speech to the Magistrate's Court in 1962, arguing that in traditional African society 'there were no classes, no rich or poor and no exploitation of man by man. All men were free and equal and this was the foundation of government'. Such views clearly shaped Mandela's attitude to law and his role as a lawyer. After leaving his rural home for Johannesburg to escape a proposed arranged marriage, he first found employment for brief periods as a policeman on the mines, but in 1942 he commenced work as an articled clerk in a solicitors firm. There he experienced a generally supportive and non-discriminatory atmosphere, disturbed by the occasional intrusion of the pervasive racist reality beyond the office door. Such injustices also characterized the practice of law and the court proceedings in which Mandela participated, but he frequently encountered and, in his writings remarked on, those lawyers who remained true to the ideals of justice no matter how racist and unjust the legal system.

Mandela worked at a number of solicitors' firms for about ten years, in the course of which he completed his articles of clerkship, as well as his BA degree, and embarked on part-time study towards his LLB at Witwatersrand University. Here he encountered racist attitudes from both staff and fellow-students but also, and far more significantly, made friendships which endured, some throughout his life, with the likes of Joe Slovo, George Bizos, Bram Fischer and Arthur Chaskalson. In mid-1952, however, Mandela set up the first African firm of attorneys, with Oliver Tambo (later to become the long-serving and deeply dignified leader of the ANC in exile). Mandela and Tambo, as the firm was known, occupied offices right

across from the Magistrate's Court in central Johannesburg, and was inundated with work. Mandela wrote of the importance of the establishment of the firm as follows: "It was a place where [ordinary Africans] could come and find a sympathetic ear and a competent ally... where they would not be either turned away or cheated… where they might actually feel proud to be represented by men of their own skin colour. This was the reason why I had become a lawyer in the first place…"(*Long Walk to Freedom* at 139). Through all the disruptions (arrests, bannings, intimidation, harassment) of the next decade, as his political role within the ANC and more broadly grew, Mandela continued to practise law, largely through court appearances in defence of black South Africans. Mandela relished such appearances. Again, in his words:"… I could be rather flamboyant... I did not act as though I were a black man in a white man's court, but as if everyone else, white and black, was a guest in my court… I enjoyed cross-examinations, and often played on racial tensions." (*Long Walk* at 142). When Mandela was banned for the first time, to its great shame the organized attorneys' profession sought his removal from the professional roll on the ground that his political activities amounted to dishonourable conduct. Again, the internal contradictions of the legal system in 1954 came to the fore: leading (white) counsel appeared without charge for Mandela, and the (white) judge dismissed the application, expressing his disapproval by awarding costs against the Law Society.

Mandela's legacy as a lawyer is probably most acutely characterized in two incidents, some thirty years apart. In his trial in the Pretoria Magistrate's Court in late 1962, he was accused of inciting others to strike, and of leaving the country without a valid passport. Although represented by counsel, he conducted his own defence. Before pleading to the charges, he applied for the recusal of the presiding magistrate not, as he repeatedly stressed, on personal grounds, but because "I fear that I will not be given a fair and proper trial…[and because] I consider myself neither legally nor morally bound to obey laws made by a Parliament in which I have no representation." His first argument rested on the argument that it was both improper and against the "elementary principles of justice to entrust whites with cases involving the denial by them of basic human rights to the African people." The second argument echoes many of the points made in the famous Hart-Fuller debate about the inner morality of law, and the necessity for fidelity to law, a few years before, eternal questions which demand the attention of all lawyers who participate in a fundamentally unjust regime wherever it may be. His second enduring legacy stems from his conduct as the first President of a free South Africa in the mid-90s. One cannot underestimate the extent to which the legitimacy of the hard-fought constitutional compromise was threatened from all quarters during his presidency, and its survival required resolute, inspired and committed political leadership. President Mandela displayed such commitment throughout, but two very prominent public displays stand out. First, he warmly welcomed the unanimous and firm decision of the Constitutional Court in outlawing the death penalty in its first judgment, thus showing implicit acceptance of the counter-majoritarian role sometimes forced on a court, in pursuit of the higher goal of the supremacy of the Constitution. Secondly, in its first year of operation the same court found Parliament and the President to have acted unconstitutionally, and upheld the challenge of the party representing the interests of those who had devised and enforced apartheid. Despite his disenchantment, the President immediately issued a statement through the public media, accepting the decision.

These vital acts served to reinforce one of the critical building blocks of the Constitution, the rule of law and constitutional supremacy, which have served South Africa well. Even though current political leadership shows little understanding of the importance of such values, they are securely in place. Mandela the lawyer would have been well pleased.

Equalizing educational opportunities in South Africa

Dr Caroline Ncube, article published in the Cape Times 3rd May, 2013

Equal Education's solidarity visit to the Eastern Cape last week evoked great emotion and a sense of responsibility amongst us all. It reminded us how social movements can drive significant change by calling pressing matters to our attention. Few are more pressing than education. Education ranks high on our national priorities because it enables people to find or create employment, to improve their standard of living and to lead dignified lives. South Africa is committed to providing education as shown by the country's commitment to achieving the Millennium Development Goals. The constitution provides that everyone has a right to basic education, including adult basic education.

It also says that reasonable measures must be taken to ensure that further education is progressively made available as the country's socio-economic condition and available resources allow. This piece focuses on the basic or primary education sector, where the state's obligations are not resource-constrained and are immediate.

Equal Education's infrastructure campaign is one of a numerous efforts to improve basic education. Other efforts target the health and nutrition of learners, provision of free textbooks in digital and print format and advocating for copyright laws that enable teachers and learners to have meaningful access to learning materials. These efforts complement each other; once we have healthy, well-nourished learners in properly equipped schools, we need to provide them with quality learning materials which do not depend on governmental production and distribution arrangements, which have been known to fail in the past. An enabling copyright framework is also essential to ensure that teachers and learners have proper access to learning materials. For learners and teachers to flourish in school certain basic infrastructure is essential, such as adequate classroom and sanitary facilities as well as running water for consumption.

In certain areas, security arrangements have to be put in place to ensure the safety of those in the school. It is only in such a conducive environment that learners can turn their minds to their lessons. Equal Education's infrastructure for schools campaign has included marches, picketing and a court case. The case was filed to compel the Minister of Education to prepare regulations that outline basic infrastructure norms for schools as required by the Schools Act. The minister eventually settled the case and drafted the regulations. Draft regulations were published in January and public comments were

accepted until 31 March. Equal Education has stated that the draft is unsatisfactory. It has submitted comments demanding that the draft be strengthened or it will resume litigation to compel the production of meaningful regulations. Final regulations have to be published by 15 May. To keep pressure on the minister, Equal Education organised a solidarity visit with several well-known change advocates including clergy, academics, authors and social commentators in April. The nation was touched by the images and reports from this visit and many are keen to participate in driving the necessary change. We are well on our way to achieving school infrastructural renewal, even if the end is still far off. Equal attention and focus needs to be directed at other elements of improving basic education.

Most learning materials are protected by copyright which gives its holder economic exclusivity over the use of the protected material. Materials that are original and permanently recorded in some way, such as print, video or audio format, are automatically protected by copyright law. There are rules that permit materials to be used for educational purposes, but are unclear and outdated. Example, the Copyright Act does not say that written works can be converted for use by visually impaired persons, or digitised to be used for online learning or distributed via mobile phones using social networks such as Mxit. It allows copying to a reasonable extent and within the bounds of what it calls 'fair dealing' - confusing, as the concepts of 'reasonableness' and 'fairness' are open to interpretation. Anyone who wishes to copy substantial portions of the work or distribute it has to get the permission of the author or publisher - negotiating for a license and paying royalties or license fees. In certain cases the rights-holders cannot be identified or found (called 'orphan works') which makes it impossible to use the material. It is on the basis of these difficulties that it is argued that copyright hinders access to learning materials. There are at least two ways to counter these negative effects and to enhance access to learning materials. First, the difficulties caused by unclear usage rights and the complexities of the usual negotiation and licensing dance can be short-circuited by the creation of openly licensed works that can be used and shared without recourse to the copyright holder ('open educational resources' or 'OER'). Siyavula, a Cape Town based initiative, led by UCT alumnus Mark Horner, publishes openly licensed maths and science textbooks, work-sheets and lesson plans for primary and secondary schools which can be downloaded for free from their website (projects.siyavula.com).

Secondly, copyright laws should be updated so that access to copyrighted materials is easier and more equitable. Not all material will be openly licensed and in many cases teachers and learners will want to rely on copyright protected material. Copyright law has to be updated to make it clear when orphan works can be used; when material can be converted into Braille or audio format and when works can be digitised and used online or via mobile phones. Some South African academics and activists have been working over several years to make a case for the amendment of copyright laws. Example, the open copyright review completed in 2008 and the African Copyright and Access to Knowledge Project (ACA2K), completed in 2010. Members of UCT's Intellectual Property Unit participated in both projects and made numerous reform suggestions to update the law. There is as yet no indication when the South African government will begin a review of the copyright laws but when the process begins, relevant research and policy briefs have already been prepared by these projects. Each South African can, and should, contribute to the push to improve basic education. Contributions include participation in public events organised by the social movement and government, sending in comments to government departments and parliament, and getting to know the needs of your local school so that you can fundraise, join in infrastructure renewal and donate or collect books for the school. Working together, individually and collectively, we can effect meaningful change.

FACULTY INITIATIVES

New Masters in 2014

Commercial Professional LLM

Provided that the necessary approval is obtained in time for the 2014 term, the Professional Master's degree will be run for selected programmes - Commercial Law; Dispute Resolution; International Trade Law; Labour Law; Shipping Law; and Tax Law. Students who pursue a Professional Master's degree will not be required to submit a lengthy research dissertation for the award of the degree and alternatively will be required to engage in several practical research tasks involving current problems in the academic discipline or area of professional practice under study.

The Professional Master's degree will most likely appeal to busy practitioners and students who would prefer to focus their research on a number of current, practically oriented legal problems.

Criminology, Law and Society

A new interdisciplinary LLM/MPhil programme in *Criminology, Law and Society* will be offered by Public Law. This programme, which is being run in conjunction with the Centre for Law & Society and the Centre of Criminology, will appeal to students with interests in law and society, criminology and social justice.

The programme aims at developing interdisciplinary skills in theory and research methods and offers a range of speciality courses including Forensics, Law and society in Africa, Punishment and human rights, Law and development, International criminal law, Social justice, Policing, and Victimology are some of the speciality courses on offer. A key focus of the programme is on equipping students with the methodological skills necessary to understand and deal with "law in action", linking them to two of the Faculty's most innovative and exciting research centres.

Marine and Environmental Law

The two core courses for this programme are International Law of the Sea and International Environmental Law. They are taught by way of two contact sessions per week (14 weeks) at the University of Cape Town.

A further two courses may be selected from a wide array of choices, including the courses offered as part of the Environmental Law Programme including Land Use Planning Law; Natural Resources Law; Pollution Law; International Law of the Sea; and Administrative Justice. Principles of Environmental Law; Land Use Planning Law; Natural Resources Law; and Pollution Law are taught by way of a block-teaching component (two weeks) held at the University of Cape Town and a correspondence learning component (12 weeks) undertaken at the student's place of residence.

Coming in 2015

Human rights and Private law

This Master's programme, taught by the Department of Private Law, will examine the relationship, in practical and theoretical depth, between human and constitutional rights and traditional areas of private law, including contract, delict, property, family law, unjustified enrichment, and African customary law.

Participants will engage in advanced, comparative study of the 'horizontal' application of human rights to private relationships - a

cutting-edge legal issue in South Africa and many other national jurisdictions.

Students will be able to register either for the programme as a whole or for individual courses as part of other UCT Master's programmes.

Intellectual property

A fourth course, Advanced Intellectual Property Law, will be added to the Master's programme. It is anticipated that a Professional IP LLM will also be on offer.

UCT's extensive LLM programme attracts a global student body. Specialist postgraduate areas in addition to the new programmes are:

- Commercial Law
- Comparative Law in Africa
- Constitutional and Administrative Law
- Environmental Law
- Human Rights Law
- Intellectual Property Law
- International Law
- International Trade Law
- Labour Law
- Public Law
- Shipping Law
- Tax Law

Mediation Rules for Magistrates

Associate Professor Mohamed Paleker

Access to the courts is one of the greatest challenges facing us today. While a lot was done in the early part of our democracy to rectify the many problems with the criminal justice system, very little was done to address issues affecting civil justice. The backlog in our courts is well known as is the fact that many millions of people in the country cannot access the courts because of exorbitant costs.

For the last year I have been working on a project with the Department of Justice to inter alia formulate a set of mediation rules for the Magistrates' Courts.

The rules, which can be accessed in all 11 official languages, take into account the contortions of our civil litigation system and are also the product of a lot of trading between various 'stakeholders' in the civil justice system.

The new draft court-annexed mediation is set out on the webpage (http://www.justice.gov.za/legislation/invitations/invite-mediation.html)

Law Advice
Dr Alistair Price

In January, an initiative called the Law Advice Programme (LAP) was launched in the faculty under which UCT academics volunteer to provide free legal advice in their areas of expertise to the Legal Resources Centre and the Women's Legal Centre. To date, thirty-two staff members have signed up to provide pro bono advice when they are able to do so. The expertise of this group is extensive, ranging from consumer law to cyber-law, from environmental law to employment law, from property law to public international law.

It was not difficult to identify the original partner organisations (LRC and WLCE) as both seek to use the law as an instrument of justice for the vulnerable and marginalised and to uphold the vision of the Constitution. We are delighted that they have expressed an interest in LAP.

Although the programme is still in its infancy, UCT participants have provided advice relating to the Consumer Protection Act, the National Credit Act, the impact of the right to freedom of expression on advertising contracts, emolument attachment orders, and prescription of levies, for example. We hope to provide a wider variety of advice in due course. We are also investigating the possibility of partnering with other public interest legal organisations in the future.

Through LAP, volunteering UCT legal academics hope to make a modest contribution to the pursuit of justice according to law in wider society, over and above the more conventional channels of academic influence: teaching and research.

Re-named, re-housed and breaking down silos

The Centre for Law in Society has moved in to All Africa House next door to Kramer. Dr Dee Smythe, the Director of CLS, explains:

'The Centre for Law and Society has grown out the work of three groupings. Firstly, the Law, Race and Gender Research Unit which was established at UCT in 1993 by Christina Murray, Ilze Olckers and Kate O' Regan; Secondly, Aninka Claassens' Rural Women's Action Research Programme (RWAR) which was established within the Legal Resources Centre and later moved to LRG; and thirdly, Marlese von Broembsen's innovative post-graduate Law and Social Justice Programme.'

The Centre hosts a vibrant mix of young and established researchers, working across a range of disciplines, including law, anthropology and history, hence the need for expanded premises.

It is also the impetus behind the newly launched Master's programme in Criminology, Law & Society which is aimed at students who are interested in "law in action". The Centre's scholarship is externally oriented - the key challenges facing South Africa - while its teaching programme aims to develop a new generation of engaged scholars and activists from within the University of Cape Town.

One of the key external challenges is land reform which was the focus of a major international conference, Land Divided, which CLS co-hosted with Stellenbosch University and UWC, to commemorate the 1913 Land Act. 'We felt that it was crucial that the conference be used as a space to break down the silos of academic knowledge often created by such events. Arguing that not only academics have expert knowledge about the legacy of the Land Act, we pushed for representatives from organisations in rural areas to present their experiences of the legacy of the Act at the conference', comments RWAR Director, Aninka Claassens.

Rural delegates came mostly from community based organisations and communal property associations and many of them chose to speak in their mother tongue, with translators for the benefit of conference goers. Some were not familiar with the conventions of academic presentations and so CLS held a workshop for one and a half days prior to the conference. At the workshop, delegates could critique each other's presentations and build their own talks, with input from CLS staff. The result was that the "rural voices" delegates gave very high quality presentations, a number of which were picked up in the print media. CLS continues to spearhead analysis and debate on critical issues, as a glance at their Custom Contested website (www.customcontested.co.za) will show. The website features news updates, a law and policy tracker, and simple explanations of all relevant legislation and policy. Key to the site is an interrogation of the notion and content of "custom". Recent articles include a piece by Dr. Liz Thornberry, positing that the legitimacy of "ukuthwala" depends on how "custom" is defined, and an article on the recent Constitutional Court judgment in Sigcau entitled "Custom is found in practice, not in law or books." Registered under a creative commons licence, Custom Contested is already the number one hit on Google, linked to *Legalbriefs,* and regularly features in print media. Go to the website to sign up for alerts on new posts from this innovative grouping, or follow CLS on twitter @CLSuct.

From Africa, for Africa and the World

Forty participants at the Inaugural Methodology Workshop on Comparative Law in Africa late last year determined, and declared, their intention to encourage and promote the diffusion of knowledge, study and teaching of comparative law in Africa.

This is not as simple as it sounds. In SADC, a country like Botswana belongs to pure common law tradition while Francophone and Lusophone countries in Africa belong to a civil law tradition. 'The only way to create a viable legal framework for all countries would be to create a comparative analysis that identifies commonalities. If you impose a predominant or hegemonic system you run the risk of rejection,' says Professor Salvatore Mancuso (picture above). Professor Mancuso is the

that was established in 2011 with funding from the Vice-Chancellor's Strategic Fund.

'The centre's location within the Department of Commercial Law also recognises the centrality of comparative law to on-going efforts at economic and legal integration in Africa,' comments Mancuso. 'For example, two projects the CCLA is involved with are on Eritrean Land Law and Mineral Law in Africa.

The aim of the Eritrean land law project is to enrich the scarce bibliographic resources on Eritrean law with a comprehensive analysis of its legal framework on land law. Previous research done on this subject will be expanded to create a comprehensive and updated legal material which will represent the reference in a sector – that of land – which is extremely important for the Eritrean livelihood. The project aims to produce a book which will give comparative insights into land tenure in Eritrea (including customary), among other systems of land administration.

The project is also aligned to the broader mandate of the CCLA in the sense that it is framed in the Afropolitan vision of UCT, and it will position the CCLA as a leading institution in the research on key themes of African law. Further, it seeks to be socially responsive by addressing a subject that affects the lives and livelihoods of almost all Eritrean citizens and giving them full information on the legal regime applicable to their land.

The aim of the Mineral law in Africa project is to create a systematic, academic commentary on mining and mineral laws in Africa, starting with a selection of Southern African countries which present comparative case studies in relation to South Africa. The choice of the research subject comes from the need to develop a collaborative research-based team, establish research collaboration with academic colleagues in other African universities and generate research findings that are relevant to Africa and which reflect its situational realities. The project aims at creating a multi-jurisdictional research team and at expanding the Law Faculty's research networks.

Further, it seeks to be socially responsive by conducting research on a subject that affects the future of much of the African countries and their economies. In addition, it builds academic capacity through its involvement of academic staff and postgraduate students in the collaborating institutions, namely UCT and the Universities of Botswana, Namibia and Zambia.

Gender Justice

The Democratic Governance and Rights Unit (DGRU) is the secretariat for the African Network of Constitutional Lawyers (ANCL).

One of ANCL's very active members, Judge Oagile Dingake of Botswana, recently came third out of twenty five people nominated from around the world for the Gender Justice Uncovered Awards. 'Not only has Judge Dingake opened the doors to gender equality in Botswana, but he has also put Africa on the map by winning this award,' comments Vanya Karth, DGRU's Programme Manager.

The DGRU was instrumental in providing some comparative research in order to help the Judge write his judgment, and in an email of thanks to Ms Karth Judge Dingake wrote "I can assure you that I know of a significant number who have down loaded the case

and read it and who would otherwise not have done so. That's the real value. The value of law to expand democratic spaces should never be underestimated. With dedicated people like you law can be a force for good!"

The Gender Justice Uncovered Awards were created by the international organization Women's Link Worldwide because in all countries, regardless of their political system or religious beliefs and traditions, what judges and courts say has a tremendous influence on the sense of justice and the day-to-day lives of people.

The Awards highlight decisions or statements made in the context of a legal process by judges, members of human rights committees, asylum offices, prosecutors, or ombudspersons which have a positive or negative impact on gender equality, including those related to sexual and reproductive rights, gender violence, and gender discrimination.

The three most sexist decisions receive bronze, silver, and gold Bludgeons; and the three decisions that best promote gender equality receive bronze, silver and gold Gavels. Judge Dingake, and Botswana's High Court won Bronze: The Bronze Gavel goes to the High Court of Botswana for abolishing a customary law that denied inheritance rights to women.

The judge wrote in his decision that "it seems that the time has now arisen for the justices of this court to assume the role of the judicial midwives and assist in the birth of a new world of equality between men and women as envisioned by the framers of the Constitution."

The annual Research Breakaway always highlights the breadth and depth of the research interests of colleagues. At Professor Corder's suggestion, a staff seminar series was instituted and the abstracts that follow will give you a taste and feel of the thinking in the Faculty.

The devil, equality, dignity and freedom are in the details:

Access to education for persons with severe or profound intellectual disabilities

Meryl du Plessis

This seminar considers the contribution of the social model of disability and rights discourse to the advancement of education to persons classified as having severe or profound disabilities. It is argued that while the rhetorical significance of both the model and rights are not insignificant, the applicable disability and education policies refer to both the model and rights in abstract terms. The history of the social model means that it was formulated in opposition to the hegemonic individual, medical model. As a result, its value to policy formulation should not be overestimated, especially in light of its focus on formal equality rather than substantive equality. Similarly, rights may either be used to mask inequalities or to challenge domination. If used for the latter purpose, rights have to be framed from the perspective of struggle. The applicable policies do not use rights in that manner and the rights discourse hides the fact that difference is still

through the lens of an unstated 'ideal'. The insufficient engagement with whether detailed processes are consistent with the central tenets of the social model or progressive articulations of rights is arguably responsible for the government's responses in the matter of Western Cape Forum for Intellectual Disability v Government of the Republic of SA. The case reflects the difficulties in overcoming deep-seated negative assumptions about persons with intellectual disabilities and the need for the normative choices that underpin both the social model and rights to be articulated, reflected and examined critically in the implementation of policies and concomitant practices.

Restitution granted to South Africa: a victory for wildlife law

Jan Glazewski

In June 2013, the US Southern District Court for New York handed down a restitution order in terms of which three defendants, Arnold Bengis, his son David, and business associate Jeffrey Noll, were ordered to pay US$ 29 million (frozen in US bank accounts) to South Africa for the illegal harvest of tons of rock lobster from South African waters and their export to the United States of America. Before being apprehended in 2001, the three defendants had run a sophisticated criminal operation from Cape Town since 1987, where they operated a number of fishing vessels illegally harvesting tons of rock lobster well beyond their allocated quota, bribing officials, forging documents, and smuggling under cover their ill-gotten gain to the USA for consumption. This article outlines the subsequent legal process which ran in both South African and US courts. In particular, it outlines the application of the US Lacey Act which provides for the criminal prosecution of environmental crimes committed beyond US territory, as well as examining related US restitution laws which allow for the restitution to 'victims' of crime for damage to property interests. More specifically, this article outlines and examines, first, the nature of the South African government's property interest, if any, in fish located in its waters in so far as fish in the sea are classified as res nullius (owned by no-one) in South African common law as well as the doctrine of public trust; secondly the perennial environmental law question concerning the quantification of damage caused by loss of natural resources whether it be by pollution damage or by theft as in this case. A third issue, peripheral in this case, but a vital question for the management and combating of fisheries crime generally is to examine effectiveness of the international regulatory regime to enforce and implement transgressions of international fishery agreement laws where these occur in areas beyond national jurisdiction, that is in areas falling under regional fisheries management arrangements.

As such this article raises issues touching on various branches of the law including: criminal law, that is the nature of fisheries crime, criminological and social issues around fisheries crime; the restitution of damage to victims of crime; private law issues such as the property rights in res nullius, res publicae and res omnium communes and the doctrine of public trust; environmental law issues such the quantification of damage to the environment or natural resources and ecosystems.

Roman-Dutch Law and the African Subsurface:
The South African and Namibian experiences

Hanri Mostert[1]

Common Law and Civil Law approaches to subsurface resource regulation will be sketched in the contributions of Barton, Gonzalez and Daintith. The "mixed" legal family to which South Africa, Namibia and Botswana belongs, crosses over the common law/civil law divide; to provide for the regulation of subsurface resources in peculiar and often anomalous ways. The reason for this mix is found in the bipartite colonial history of the region.

Our contribution is limited to a study of one particular African perspective on subsurface resource regulation: that of Southern Africa. Here the development of a mixed legal tradition has been most pronounced, because of the region's particular colonial history. In this chapter, we examine the proprietary principles on which the law relating to subsurface regulation is based, referring particularly to differences in the reception of Roman-Dutch law due to different colonial histories. Our main focus is South Africa and Namibia, although we include superficial references to Botswana. In undertaking this analysis, we are particularly interested in the role that legislative regulation and policy changes have played to amend or substitute Roman-Dutch law rules. This line of inquiry may assist in determining whether the roots of the mixed legal family investigated here remain influential in current law and practice regulating the subsurface. We contrast the legacy of Roman-Dutch law in South Africa and Namibia, discussing basic tenets of subsurface ownership from the Roman-Dutch law perspective, and tracing the influence that colonialism and constitutionalism had on the development of the legal system as it pertains to the subsurface.

Notes:

[1]On behalf of co-author Hugo Meyer van den Berg, research associate, UCT

Pro-Democratic Intervention in Africa and the 'Arab Spring'

Hannah Woolaver

This seminar will analyse recent practice in three North African countries stemming from the 'Arab Spring', that is, the widespread pro-democratic protests that erupted first in Tunisia in December 2011, and spread to several other North African countries, leading to the fall of established, unelected governments in Tunisia, Egypt, and Libya. The analysis will focus on whether the international response to these events signaled support for the existence of a right of pro-democratic intervention in customary international law. If this right is indeed established in international law, States and international organisations could rely on it in order to justify action, such as the provision of material support to opposition forces, the early recognition of an opposition force as the government of the State, and even perhaps the use of force to install democratic government, that would otherwise contravene the undemocratic State's right to territorial integrity and political independence. The State practice and opinio juris, that is the action that States have taken in relation to the events in Tunisia, Egypt, and Libya, and the explicit justifications offered for this action, will be considered in turn. The article will restrict itself to

examining the African loci of the Arab Spring for two reasons: first, these cases are the most interesting for the purposes of this article, as they are the cases in which the most extensive international action was taken to support the pro-democratic movements; and second, existing literature has posited the existence of a distinctly African regional customary international law rule permitting pro-democratic intervention in the Continent, meriting particular focus on potential instances supporting a right of pro-democratic intervention in the continent[33].

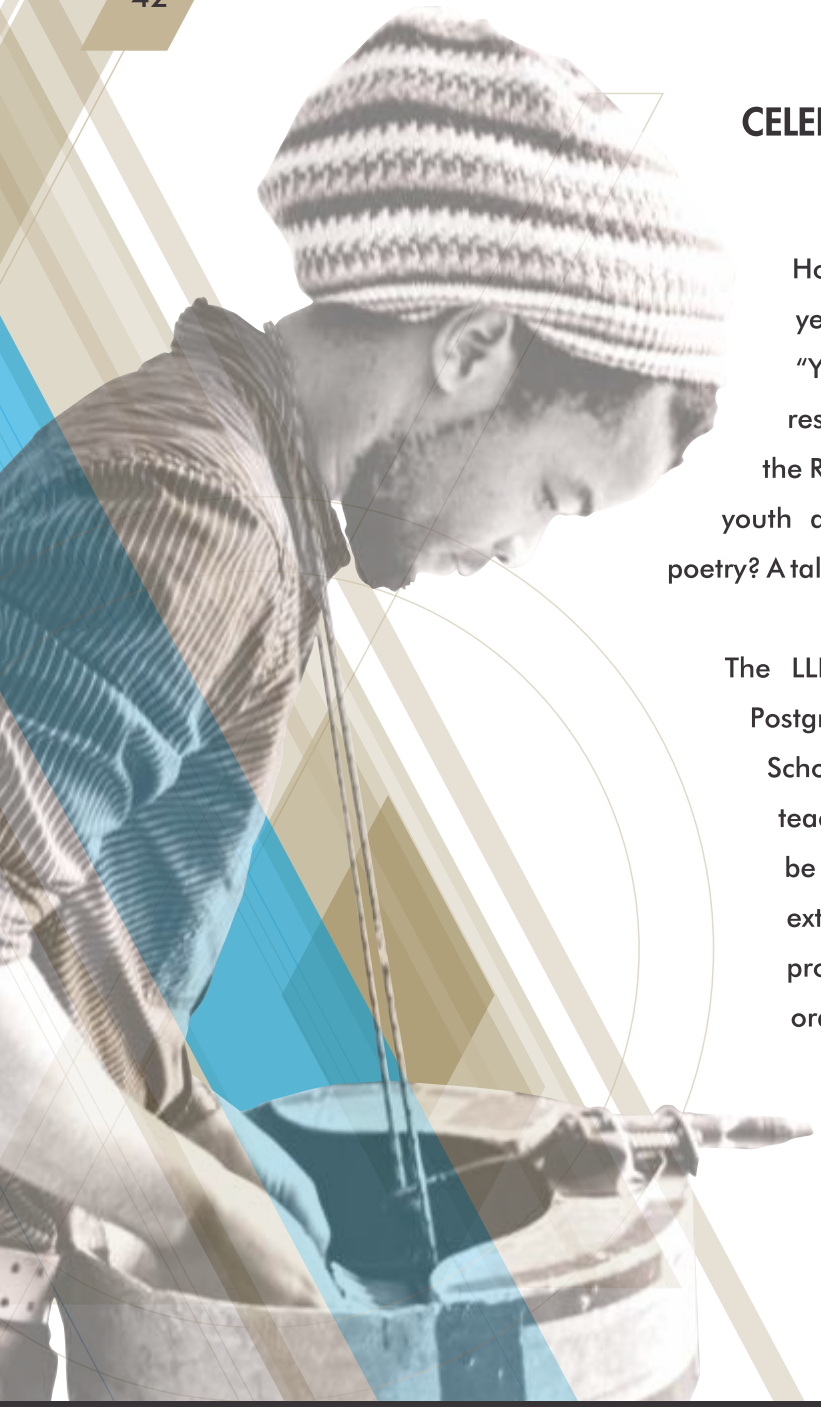
It will be shown that the response of States and international organisations to the events of the Arab Spring in Africa does not constitute practice consistent with an international legal right to engage in pro-democratic intervention. Instead, the practice confirms the traditional boundaries of the prohibition of intervention and the use of force in international law. This demonstrates that States and international organisations consider the States in question to continue to benefit from these prohibitions, despite the undemocratic nature of their governing regimes, and the extensive pro-democratic protests being carried out by large sections of the domestic population.

Malawi's Tainted Judiciary:
Why urgent reform is needed

Danwood M Chirwa

Since 1994, the judiciary has been a central pillar of democracy in Malawi. Operating under adverse political and economic conditions, most Malawian judges have shown unerring commitment to justice, often to the disappointment of the political elite and at personal risk to themselves. The body of jurisprudence they have generated over these years is staggering and compares well with that produced by the courts in more established democracies. This admirable record of the judiciary is now under serious threat arising from the cumulative effect of attempts made by successive regimes in the country to tame the judiciary. Former President Bakili Muluzi attempted (unsuccessfully) to meddle with the judiciary firstly by seeking to remove three judges whom he thought were too independent for his liking. He then introduced a law that limited the powers of High Court judges to hear constitutional cases alone, which later led to the emergence of what has come to be loosely called the 'Constitutional Court' – meaning a High Court sitting in a panel of at least three judges to hear cases raising direct constitutional issues.

If Muluzi was uncomfortable with an independent judiciary, President Dr Bingu wa Mutharika Mutharika was incensed by it. Throughout his tenure, Wa Mutharika simply did not understand the idea of the separation of powers, or that the judiciary is not really an enemy of government but an essential partner whose commitment to truth and justice must be seen as integral to any conception of a good and civilised society. Apart from launching public attacks on the judiciary and the legal profession as a whole, he originated a new form of subtle but quite effective interference with the judiciary based on a perceived gap in the Constitution. This gap takes advantage of the inherent appetite human beings have for power, influence, attention and accumulation of wealth. Section 119(7) of the Constitution empowers the President, to assign a judge to any other office in the public service for such period as the President may determine. This provision is a remnant of the 1966 Constitution whose relevance to the new constitutional regime is at least questionable. Nevertheless, its possible impact on the independence of the judiciary can be limited with appropriate interpretative tools.



CELEBRATING YOUTH IN AFRICA

How to celebrate Africa? That was the question. Last year's extravaganza of fabric was a hard act to follow. "Youth in Africa" seemed an appropriate theme. The research units had abundant material for discussion, as the Roundtable on p. 44-47 shows, but how to talk about youth and about Africa without thinking dance, music, poetry? A talent show?

The LLB Student Councils loved the idea as did the Postgraduates and quite soon a programme formed. The School of Dance loaned us a dynamic gumboot dance teacher. Tracy-Lee Lusty and Ernst Muller volunteered to be compéres and soon there were more items than an extended Meridian could hold! Students and staff provided a cornucopia of 'tastes of the Cape' and pre-orders flooded in for Göksen Effendi's *Akni*.

The pictures really do tell the story, as does the Programme of the day.

PROGRAMME

12:10 – 12:40
"Nkosi Sikelel iAfrika" – UCT Law Faculty Choir
"Die Kind" – Dr Alistair Price and Dr Caroline Ncube
Response to "Die Kind" – Werner vd Westhuizen (Prelim B)
"Oltramare for Piano" – Richard Maccallum (Final Year)
"1000 miles" – Tracey-Lee Lusty (Vocal) (Intermediate Year)
"Africa" – Charles Mathonsi (Vocal and Piano) (First Year)

12:40 – 12:45
INTERLUDES – Machume Zango (College of Music fellow) and Glen Hartman (Final Year)

12:45 – 13:25
PANEL DISCUSSION – THE YOUTH IN AFRICA: OPPORTUNITIES & CHALLENGES p. 44-47

13:30 – 13:45
Solo Cello Suite by J.S. Bach – Natasha Otero (Prelim)
"All My Love to a Shoprite Cashier" – Kevin Hoole (Final Year)
Gumboot Dance (Student and staff team)
Break dance – Lorena Pasquini
Litolobonya (Sotho Dance) – Tsidy Khiba (Intermediate Year)
and Selloane Thafane (Final Year)
"Wave Your Flag" – UCT Law Faculty Choir
Judges: Deputy Vice Chancellor Nhlapo, Fahiem Stellenboom and Virginia Davids

Youth in Africa Roundtable

Learning to live on the interest

Michaela Young

We are facing a debt crisis for we, humanity, have lived beyond our means for far too long and now our account is in overdraft. What crisis am I talking about? It is not the financial crunch or the fiscal cliff – the crisis I am concerned with is something far more fundamental. It concerns our very survival. I am talking about the environmental crisis.

We have been using natural resources at a rate which by far exceeds the planet's capacity to replenish those resources. As a result, nature is in decline: Our never-ending hunger for resources is resulting in deforestation, degraded soils, and even desertification, polluted air and water, and dramatic declines in the numbers of fish and other species.

Biodiversity has declined globally by around 30% over the last 40 years and each and every single day approximately 5 additional species become extinct. An estimated 80% of the world's forests has been lost to deforestation and a further 13 million ha are converted annually. 4 million ha of arable land are also lost every year to desertification and erosion.

Currently, 54% of available freshwater resources are appropriated by humans. By the year 2025, 2/3 of the world's population could be facing serious problems with water availability. We are polluting our terrestrial and marine environments and the air with chemicals, pesticides and other harmful substances and we are consuming too much energy and are placing too much reliance on fossil fuels to feed our demand for resources.

As a result of our way of life, the earth is getting hotter. Temperatures have already risen by almost 1°C. The effects which we would see if the earth warms by 6°C will be cataclysmic – there will be mass extinctions and the majority of the earth will simply become uninhabitable for humans and other species alike.

Our loan comes at a high price, a price that Africans and Africa's youth will feel more acutely than people elsewhere in the world because Africa is both warming faster than the global average and its population is less resilient and able to adapt to the effects of climate change.

We only have one planet. The end of nature will be the end of humanity. The fundamental challenge for Africa's youth therefore will be to learn to live on the interest rather than the earth's capital.

Ascribed identities

Nolundi Luwaya

The Traditional Leadership and Governance Framework Act keeps alive the contested boundaries created by the Bantu Authorities Act of 1951. Through section 28 – the deeming provision – the boundaries of the much-hated Bantustans continue to exist. These boundaries are deeply controversial because the Bantustans were based on the notion of 'homogenous tribes' living neatly side by side. Making this notion a reality meant uprooting people and forcing them into 'tribes' with no regard as to how people had chosen to live, or how they defined their own identities.

Legislation, such as the Traditional Courts Bill (TCB), which gives powers to traditional leadership structures and institutions created and recognised by the Framework Act, also adopts these boundaries. By entrenching these boundaries, the legislation 're-tribalises' 'born-frees' who never lived under the Bantustans. It forces young South Africans back into the confines of boundaries that were dissolved with the advent of democracy.

How does being forced back into these boundaries impact upon the lives of South Africa's youth? What are the consequences of this confinement? Young people living in rural areas are not presented with the option to opt into or out of these boundaries; instead they are imposed upon them… Coupled with the re-adoption of these boundaries, the legislation casts traditional leaders as the custodians of custom. This means that, instead of defining their cultural identity for themselves, youth in the former homelands have their identity defined for them by traditional leaders. Young South Africans cannot decide for themselves how best to express their identity – this decision instead falls to traditional leaders and is based on their interpretation of custom.

If the traditional leaders adopt a conservative interpretation this makes it difficult for young people to challenge inherited understandings of community and belonging. Top-down patriarchal interpretations of custom also potentially shut down progressive and inclusive interpretations that may be emerging within the community.

In some communities adherence to these sanctioned identities is contested at the local level and legislation like the TCB would make 'deviance' punishable through the imposition of forced unpaid labour or the deprivation of customary entitlements.

It is unimaginable that South Africa's young people should live in fear of such harsh punishment after the transition to democracy.

The child soldier

James Chapman

Rehabilitation of the child soldiers is a difficult process. The children have been brutalised and have carried out killings. They have wielded life-and-death power over adults often in their local communities. The armies using them have fed, clothed and given them shelter. There are projects in Mozambique, Angola and Somalia helping former child soldiers. In Sierra Leone there is an orphanage for escaped soldiers; however, for the majority of child soldiers in Sierra Leone, as long as the civil war continues they will be forced to fight.

At the Refugee Rights Unit we assist asylum seekers and refugees with a wide range of problems and would consequently assist former child soldiers with for example:

a) Arguing Appeal Cases before the Refugee Appeal Board – setting out the facts of the former child soldier's refugee claim
B) Assisting in the integration and rehabilitation of child soldiers generally through referral of such individuals to organisations that can assist with counselling
c) Ensuring that such child soldiers are documented and processed within the refugee system and working with or against the Department of Home Affairs to this end.

This area is perhaps a little delicate in the context of the deaths of South African Soldiers in the Central African Republic at the hands of among others child soldiers. That said one must bear in mind that child soldiers are often forced into becoming child soldiers, they are abused, beaten and/or drugged and separated from their families. Moreover strictly speaking irrespective of the transgression that a child soldier may have been accused of, he or she may not be returned to a country in which his or her life or liberty would be jeopardised.

It is clear that the plight of child soldiers is a particularly serious challenge facing the youth in Africa today and our goal should be to work as hard as possible to reduce or stop the recruitment of child soldiers, and to help to assist, support and rehabilitate child soldiers.

Access to knowledge and copyright

Tobias Schönwetter

As a result of digital technologies and the widespread use of the Internet, copyright has become an everyday issue for most of us. While these new technologies hold the promise of increased access to knowledge material - which in turn forms the basis for education, economic, social and human development, personal growth and scientific advancement - copyright laws privatise knowledge through

granting creators monopolistic exploitation rights in their works.

These monopolies in knowledge materials and other cultural goods arguably lead to higher than necessary prices for, e.g., text books. Research suggests that once copyright enforcement begins in earnest in African countries many learners will be in a precarious situation since access to learning materials is nowadays often facilitated through illegal copying of otherwise unavailable or unaffordable text books, journal articles and so forth.

Even though most of us take copyright protection for granted the concept of copyright protection is still a relatively new phenomenon as the world's first fully-fledged copyright statute – Great Britain's Statute of Anne of 1710 - only entered into force a mere three hundred years ago and with a much narrower scope than modern copyright regimes. Nowadays, however, copyright laws around the world grant creators of creative works far-reaching monopolies to control the use and exploitation of their works.

In order for Africa to develop and thrive, Africa needs a copyright system that empowers Africans to take full advantage of the 21st Century knowledge economy, under due consideration of private and public interests. Insufficient access opportunities caused by overzealous copyright protection regimes incite copyright infringement and may ultimately weaken respect for copyright laws even further. As a first step, we need to commit more resources towards raising awareness of what copyright prohibits and what it actually allows; but we also need to further investigate alternative models of knowledge dissemination such as the creation and use of Open Educational Resources (OER), Open Access (OA) journals and Creative Commons licensing.

UCT appears to recognise this as it has begun to invest in ground-breaking programmes such as the OpenUCT initiative; and international and domestic law and policy-making bodies in the area of copyright law also increasingly emphasise the importance of striking a fair balance between copyright protection and access to knowledge.

Of being an African Youth

Ada Odor

Africa's grappling with many challenges while trying to actualise its enormous potentials can be likened to a patient in recovery who is susceptible to new infections. The struggle between interest groups contesting, negotiating and renegotiating political power, social spaces, economic enterprise, geographical boundaries, resource allocation etc means that crisis is inevitable, but not necessarily intractable.

It is important that African youths respond to this state of affairs by not having a defeatist or resigned mindset but by recognising that the developmental context in which African youths grow equips them with a skill set which includes knowledge of the language, appreciation of the culture and pathways through the socio-cultural terrain in which they have grown.

STAFF

Valete

It was a sparkling affair with champagne, candle light and crystal in the regal setting that is the Upper Common Room of Smuts Hall as the faculty gathered to say *Valete* to treasured colleagues - Bev and Evance, John and Julian, Pamela and Pat, and Wouter. It should have been a solemn occasion, and it was, but there was also the celebration of so many shared moments experienced in the corridors of Kramer. Solly Leeman toasted Pamela Snyman for her magnificent contribution to the law library dating back to 1966; Elrena van der Spuy toasted her SALS triumvirate – Julian Kinderlerer for teaching us an exotic new language of IP, Bio-ethics and more; Evance Kalula, for his cosmopolitan spirit, his gravitas, and for the African compass he brought to the Faculty and John Hare, distinguished teacher, for his fine example of what it means to excel as a mentor and colleague.

In toasting Bev Bird and Pat Narris, the Dean reflected on the success of the Law Clinic and Bev's energy in growing student numbers; she reflected too on Pat's ability to be the calm interface between the students and all the clients they serve. She thanked her colleague, Wouter de Vos, for his contribution to Public Law and the student experience.

Pierre de Vos, Deputy Dean, proposed a final toast, to those non-retirees leaving who we shall all miss - Paul Benjamin, Carias Chokuda, Peggy Gumede, Sindi Mnisi-Weeks, Thandi Mwambala and Aifheli Tshivashe. The grand finale was the choir who brought their unique combination of talent and humour to a rendition of not *Dancing Queen* but *Dancing Retiree*.

Scottish distinction

The University of Edinburgh conferred the Honorary Degree of Doctor of Laws on Professor Danie Visser, in Edinburgh in recognition of his standing as a scholar, as a teacher and academic leader, and as a friend of Scotland and the University.

In the official Laudatio, Professor Danie Visser (left) was described as a distinguished scholar whose enviably wide range of interests include legal history, legal taxonomy, contemporary legal culture and, of course, substantive law. Above all, it is the field of the law of unjustified enrichment which he has made pre-eminently his own. His book on that subject, published in 2008, is a ground-breaking analysis of the law of South Africa set against a broad historical and comparative background. With the ending of Apartheid came a revival of links with Scottish universities. From the South African side, Danie Visser has been a leading player, organising conferences and exchanges, becoming a regular visitor to Edinburgh, and even – for he is a man of courage – writing on Scots law. An early high point was a book comparing private law in the two jurisdictions and involving a team of almost 50 scholars. The close co-operation has continued: only this week we have been celebrating the publication of a new collaborative volume which considers the interplay of private law and human rights in Scotland and South Africa. These volumes deepen and enrich the legal debate in countries which, though different in so many ways, are united by a common legal heritage. For both volumes, Danie Visser was an editor and a moving spirit.

CNN Reporter

Criminal trials involving celebrities can easily become entertainment rather than news stories. This tendency was apparent in the trials of disgraced NFL star OJ Simpson and Conrad Murray, the former doctor to Michael Jackson. As the courtroom drama unfolds sensationalist media coverage often obscures measured legal and social discourse brought into view by a case. As the news broke that Oscar Pistorious had shot and killed his girlfriend Reeva Steenkamp the world media was awash with startling allegations and rumours.

Many of the initial reports proved to be false but once they had been circulated they were already accepted by swathes of the public as established fact. Such sensationalist and unsupported reporting stands to damage South Africa's credibility in the eyes of the world and also to damage the legitimacy of the criminal justice system. Thus, when CNN asked Kelly Phelps (above) to provide legal analysis for them on the Pistorious trial she was enthusiastic about the opportunity to contribute in a balanced and informative manner to public debate on the case. 'My remit has been to explain the South African criminal law and criminal justice system to a foreign

and/ or non-legal audience. The crush of journalists at the courthouse in Pretoria during the June 4 hearing was a stark reminder of the fervent global interest in the case. In order to establish high standards of reporting, foreign agencies should all make use of local knowledge to help inform the debate,' comments Kelly.

American Criminology Award

Professor Clifford Shearing was awarded the Thorsten Sellin and Sheldon and Eleanor Glueck Award by the American Society of Criminology. The Sellin-Glueck Award calls attention to outstanding criminological scholarship that considers problems of crime and justice as they are manifested outside the United States, internationally or comparatively. Past winners include Stanley Cohen, John Braithwaite and Nils Christie.

Professor Shearing has also been appointed to the Council of Canadian Academies Expert Panel on the Future of Canadian Policing Models, which has been tasked by the Minister of Public Safety to assess the current evidence and knowledge of how policing is organised and delivered in Canada.

In early 2013 he received an "A1" research rating from the SA National Research Foundation, their highest rating, in recognition of the high quality and wide impact internationally of his recent research outputs.

Social Science Awards

The Department of Science and Technology hosts the Science awards annually to recognise the achievements of South African women scientists and researchers. The 2012 Awards included Dr Sindiso Mnisi-Weeks (right), winner in the Emerging Researcher category and Professor Hanri Mostert (below), runner up to Professor Sarojini Nadar of UKZN in the Social Sciences and Humanities category.

Dr Mnisi-Weeks, a UCT LLB graduate, former clerk of the Constitutional Court, and Rhodes scholar has a publication record that includes seven peer-reviewed journal articles, three book chapters and one technical report and spans customary law, women's rights, traditional institutions and the Constitution. Sindi was part of the Law Race and Gender (now CLS see p. 35) research unit team that was awarded UCT's Social Responsiveness Award in 2011.

Professor Mostert's undergraduate studies in humanities and law at Stellenbosch piqued her interest in the resource potential of land; her doctoral studies pursued the question and lecturing at both Stellenbosch and UCT has 'allowed her to share her insights with new generations of property law students; she is a B-rated NRF researcher and the holder of several fellowships including Commonwealth, Max Planck and Humboldt. (See p. 26 for details on her book).

Other academics in the news

Richard Calland: appointed to the Independent Access to Information Appeals' Board of the World Bank

Pierre de Vos: his blog, *Constitutionally Speaking*, is now a direct link on the *Daily Maverick* homepage

Jan Glazewski: appointed to a reference group for Minister Trevor Manuel's Global Oceans Commission

Rochelle le Roux: appointed to the Anti-doping Commission of SA Sports Confederation and Olympic Committee

Salvatore Mancuso: UNDP appointee to advise Egyptian and Ghananian governments on development policies

Christina Murray: expert constitutional advisor on Yemen for the Special Advisor to the Sec. Gen. of the UN

PJ Schwikkard: one of two returning members for a five year term at the South African Law Reform Commission

Congratulations to

Waheeda Amien was invited to provide expert input to the UN on the rights and securities of religious minorities and to the International Muslim Minority Leaders Colloquium on synergies between civil and Muslim personal laws.

Jaco Barnard-Naudé was appointed Honorary Research Fellow in the Birkbeck Institute for the Humanities, University of London and to the Board of the Triangle Project based in Cape Town.

Loretta Feris who has been appointed to the IUCN (World Conservation Union) for three years as part of the independent review panel for biodiversity management at Black Mountain Mining which is in the process of establishing a new mine in the Northern Cape.

Julian Kinderlerer, President of the European Group on Ethics, was keynote speaker at the World Medical Association around new laws on clinical trials and medical devices; his work in Africa includes planning a post-graduate IP degree in Tanzania and working with peasant farmers and the World Seed Index.

Rashida Manjoo was awarded the inaugural William McKinley Award for Governance by the Albany Law School, New York, in recognition of her lifelong public service work; Rashida is a UN special rapporteur on violence against women.

Dee Smythe was part of the three man UCT team who presented at a UNESCO conference in Barcelona on *Transformative Knowledge to drive Social change;* this conference is the sixth since the first UN World Conference on Higher Education in 1999.

Marlese von Broembsen has been awarded a Harvard Fellowship for 2014; as part of the Law and Informality group of lawyers, Marlese spent a week in India, part of which included living in the slums with informal traders; the next study tour will be to Bogota.

STUDENTS

Grad High Tea

It has become tradition to host a High Tea for graduands in Kramer. The formal part includes the award of prizes (see p.60), a guest speaker (Adv. Roseline Nyman in 2012), and addresses by the Dean and Deputy Deans. The informal part sees parents, staff and students celebrating together, as these pictures show.


Dean, Professor Schwikkard


Mike Lows, Meghan Finn, Siboneb Mdluli & Nabella Mia


Grant Caswell


Rocker Mandipe


Sandhya Naidoo, Rodney Mhangu, Paul Harker, Mary Lu & Eduard Beyer


Dave Hutchison & his mother


Lara Wallis & Kelcey Smith


Zubeida Mehtar, Nikita Dehal & Stacey Sanari


Michelle Horak & Patrick Wainwright

CONGRATULATIONS TO UCT MOOTERS

Centre for Child Law

The Centre for Child Law's moot competition was held last weekend in Pretoria and the UCT team of Amy Williamson and Jonathan Singh (left) finished as runner-up finalists to Tuks, with Amy taking Best Speaker of the competition. The finals were argued in Room C ('the Peace palace') of the North Gauteng High Court with Judge Jody Kollapen, Adv Chris Woodridge and Adv Irene De Vos presiding. Judge Kollapen reminded the court that many important Apartheid cases were heard in that very room, such as the Delmas 4. Counsel who had argued from those same chairs included names such as Bizos and Chaskalson. 'It was a fantastic sense of occasion, and the mooting was at a great level,' commented James Newdigate, a tutor in the Department of Private Law and the team coach.

All Africa Competition

The 21st African Human Rights Moot Court Competition was held from 1 to 6 October at the Universidade Eduardo Mondlane of Maputo, Mozambique. It was organised jointly by the host university and the University of Pretoria's Centre for Human Rights. Sixty teams competed in the competition, from law faculties all over the African continent. The competing teams are divided into three language groups: Anglophone, Francophone, and Lusophone. UCT competed in the Anglophone group, which had 44 teams in all, representing more than 12 African countries. Our mooters, Lerato Ramotsamai and Themba Chauke (above), were placed fourth overall out of the 44 teams in the English group, with the second-highest team oral score, and in the top five written memorials. The team was coached by Dr. Hannah Woolaver, a lecturer in the Public Law Department.

CONGRATULATIONS TO UCT FELLOWS

The New Haven Experience

Benson Olugbuo, a PhD student in Public Law

The Fox International Fellowship is awarded annually by Yale University and I encourage any postgraduate law student interested in exploring the US and Yale University to consider submitting an

application through IAPO. The Macmillan Centre where the Fox Fellowship is housed and administered is full of activities all year around and I was privileged to be inducted as a member of the Council on African Studies (CAS) and assigned an office space. I used the opportunity offered by the fellowship to participate in the proceedings of the Assembly of States Parties of the International Criminal Court in December 2011 at the United Nations Headquarters in New York.

I audited a seminar course on Contemporary Legal Problems in Africa at the Yale Law School and got an idea on how 'international experts' on African issues are trained. I was also lucky to teach my local language (Igbo) at the Yale Centre for Language Study. I fully participated in the activities marking the 311th commencement (graduation) programme in May 2012. Interestingly, on that day, it rained heavily and you can imagine how students, staff, families and well-wishes defied the rain to celebrate the newly minted graduates. We had a feel of a typical American election year that returned Barack Obama to the White House and witnessed the drama between 'Occupy New Haven' protesters and the City Council that played out at the New Haven Green. Looking back, I can only conclude that it was a good decision to travel with my family as it helped me to settle in and make considerable progress on my PhD programme while experiencing the American dream.

Berlin-bound

Moliehi Shale, a PhD student in the Centre of Criminology

Moliehi Shale was one of 16 fellows selected in the 2012/13 cohort of International Climate Protection Fellowships of the Alexander von Humboldt Foundation. The fellowship began with a two week long tour of climate-related industry and academic

institutes, where we learned a lot about the climate change and environment landscapes of Germany before being assigned to our respective host institutes throughout Germany.

My host institute in Berlin is a research collaboration project whose thematic focus is on Governance in Areas of Limited Statehood. Due to its collaborative nature, the research centre is home to students and professors from academic disciplines as varied as medieval history to patent protection in developing economies.

The fellows meet four times in the course of the year which has meant travelling to different parts of Germany. On one of those occasions we and other current Humboldtians were hosted by the German Federal President in his garden at the presidential residence in Berlin. Learning about the German culture and learning more about Berlin has been an amazing experience and now that it is summer, the city has taken on a very different character of swimming in nearby lakes, eating ice creams in the parks and a favourite for the young and old in Germany, downing a nice cold beer on the ubahn.

It has been a wonderful experience being here and as the fellowship nears an end I look forward to the completion of both the project and my PhD thesis (on resilience and risk management in the informal sector).

PS. Mihlele's research project was given an award by IKSA, the International Climate Protection Programme.

FORUM IN BEIJING

Peter Cohen

In June I was fortunate enough to attend the inaugural International Forum for Law School Students hosted by the Renmin Law School of China in Beijing. I presented a paper on customary law in South Africa, focussing on the challenges which arise in our pluralistic legal system and the progress made in giving customary law its constitutionally entrenched equal status to that of the common law. After my presentation I fielded many questions from students who found similar challenges with the Chinese legal approach to regional traditional law.

For the past 16 years the Indiana University McKinney School of Law has held a month long program at Renmin University, and it was this collaboration which formed the basis of the conference. There were also speakers from Canada, Brazil, Japan, Mongolia and South Korea. The plenary session in which I spoke included speakers from America, Switzerland, China and Australia.

I arrived in Beijing very late on Friday night and was very grateful to be met by a Renmin law student at the airport. The next morning I met the other conference participants in the hotel lobby and boarded a bus to the Mutianyu section of the Great Wall of China, one of three sections of the wall open to the public which is easily accessible from Beijing. After a three hour bus ride (weaving journey of my life) we made it to our destination. The wall is dotted with watchtowers, the only place where traders are allowed to sell refreshments. As the incline increases so do the prices. This is not a coincidence; it takes advantage of tired tourists' increased demands and it also compensates the traders for their efforts carrying their wares up many hundreds and hundreds of stairs. We topped off an amazing day with a toboggan ride off the wall. The only negative was that I had inadvertently switched my camera onto the fish-eye setting!

The aim of the conference, which took place on the Sunday, was to get law students from all over the world to meet each other and to share some aspect of their legal system. The strength of the conference was that there was no set topic, which allowed for presentations from vastly varied fields of law. These included the experiences of an intern at the European Court of Human Rights, mental health law in America, and Chinese HIV policy.

After the conference I remained in Beijing for a week, where I was very kindly hosted at the campus hotel by Renmin University. Although most of the international students left immediately after the conference the American students remained. This was great as it gave me the opportunity to socialise with them and together explore the city.

I visited many of the popular tourist sites, including the Summer Palace, Temple of Heaven, and the Forbidden City next to Tiananmen Square. Highlights were spending a day in the contemporary art district and strolling through the Nanluoguxiang district, next to the popular tourist and nightlife area of Hou Hai, where bars line the sides of the lantern-lit lakes. I also went to the most popular antique market in China where thousands of traders sell their goods. I bought my father a bronze Mao statue after haggling with the shop owner, who spoke no English, by typing

values into his calculator. I still don't know if I got a good deal. I am very thankful to UCT for giving me this opportunity, to Renmin University for very kindly sponsoring my trip, and Fatima Osman for helping me with my paper. Renmin University is planning to extend next year's conference to five days, and I would enthusiastically recommend UCT students to apply next year.

STUDENTSHIP IN CHICAGO

Linda Masina

I was privileged to be chosen for the first UCT - International Academy of Matrimonial Lawyers (IAML) studentship, and to be hosted by Joy Feinberg (below).

My time at Feinberg and Barry, Chicago, was an eye-opening experience. Each day presented a new and exciting experience of the practice of Matrimonial Law, from a missed custody exchange to a dispute about which parent should have custody over a holiday to one party taking money out of a joint account.

Being given tasks such as drafting correspondence, preparing pleadings for court, reading through legal documents, doing research work and working with paralegals gave me a keen insight into the daily life of a family lawyer and the great deal of groundwork that goes into preparing for a hearing or a trial. Sitting-in in a client consultation as well as a deposition painted a clear picture of just how emotional the practice of family law can be. Having the pleasure of shadowing a court appointed psychologist and sitting-in in a child custody interview with both parents gave me a vivid understanding of the devastating effects divorce has on both parties and more so on the children. Being exposed to this broadened my perspective on what sets apart a good matrimonial attorney from others, the critical qualities and skills that such a lawyer ought to possess which includes being emotionally sensitive and a counselor to your client yet remaining effective and objective, relentlessly representing your client yet knowing when to compromise or negotiate.

One of the highlights of my studentship was spending a day with two different judges. I had the honour of sitting on the bench with them and hearing the matters that were on roll and would then have to give my opinion and thoughts on the different cases. This was slightly intimidating at first especially because the American legal system differs markedly from the South African legal system. However, I soon learnt that irrespective of the different legal systems or jurisdiction, the issues that arise in a divorce case or a custody case are similar anywhere, what may differ is the process or mechanics employed in addressing the different issues but the concepts and results remain largely the same.

Spending the day with the judges made me realise that despite the stressful, complex and messy nature of matrimonial practice, it is a truly rewarding and satisfying profession. Sitting-in in a divorce mediation of a high-profile CEO and in an emergency custody intervention further attested to this.

My time is Chicago was culturally enriching as well. Both IAML and my host family did an exceptional job at ensuring that I had the full "American experience." From the Architectural Boat cruise to watching the Chicago Symphony Orchestra to meeting radio personality and American author Garrison Keillor at the famous Ravinia Festival.

I lived each day in Chicago with a sense of disbelief and awe that what was happening was in fact happening.

A heartfelt thank you to IAML, UCT Law School, Feinberg and Barry, as well as my amazing host family and mentor, Joy Feinberg and Greg Brown, for making this transformative experience a reality.

The LSC hosted a series of talks, for example one on Mandela by Dep. Minister Ebrahim (centre). With him are Jonathan Singh (President) and Caroline Timoney.

Masters and more, June 2013

Brothers in Law Ashimizo (PhD) and Amanoshokunu (LLM) Afadameh.

Husband and wife (and alumni together twice) Lauren Kohn and Andrew Goldschmidt.

Supervised and Supervisor. Fatima Osman and Professor Danwood Chirwa.

DIE KIND WAT DOOD GESKIET IS DEUR SOLDATE BY NYANGA

INGRID JONKER

Die kind is nie dood nie
die kind lig sy vuiste teen sy moeder
wat Afrika skreeu skreeu die geur van vryheid en heide
in die lokasies van die omsingelde hart

Die kind lig sy vuiste teen sy vader
in die optog van die generasies
wat Afrika skreeu skreeu die geur
van geregtigheid en bloed
in die strate van sy gewapende trots

Die kind is nie dood nie
nòg by Langa nòg by Nyanga
nòg by Orlando nòg by Sharpville
nòg by die polisiestasie in Philippi
waar hy lê met 'n koeël deur sy kop

Die kind is die skaduwee van die soldate
op wag met gewere sarasene en knuppels
die kind is teenwoordig by alle vergaderings en wetgewings
die kind loer deur die vensters van huise en in die harte van moeders
die kind wat net wou speel in die son by Nyanga is orals
die kind wat 'n man geword het trek deur die ganse Afrika
die kind wat 'n reus geword het reis deur die hele wêreld

Sonder 'n pas

SCHOLARSHIPS AND AWARDS

Law Endowment LLB scholarships

Letisha Bergstedt
Jade Buckton
Sashen Govender
Shanquin Johnson
Tlholo Lehlekiso
Bonga Magubane
Charles Mathonsi
Indira Mkunqwana
Vuyo Ntlangu
Siyabonga Ntombela
Vuyolwetu Ntshinga
Ndondo Nzama
Ntasha Otero

UCT-Law Firm initiative

Bowman Gilfillan
Cecil Chauke
Julita Ramsunder

Cliffe Dekker Hofmeyr
Kwadwo Owusu
Khanye Sidzumo

Herold Gie
Lulama Lobola

Norton Rose
Nuhaa Amardien
Siviwe Mcetywa

Smith Tabata Buchanan Boyes
Euraeffie Oppon

Webber Wentzel
Mihlali Magaqa
Rofhiwa Nemokula

Law Endowment reawards

Robin Adams
Akua Danso
Sarah Gama
Naledi Hopa
Moegsienna Ismail
Nkululeko Jiyane
Anastasia Katts
Mulesa Lumina
Lebohang Makhubedu
Silindile Mhlongo
Mayibongwe Mncube
Ebrahim Shaikh
Nick Boydell
Mandla Radebe
Arhn and Claire Palley
Nandi Maesela
Lauren Niekerk
Ntokozo Dladla
Caro Wiese
Almaaz Mohamed
Winnie Pakane

Law Endowment LLM / PhD

LLM
Michael Jones
Callixte Kavuro
Sandra Kayereka
Vongai Masocha
Ibezimako Wogu
Nick Boydell
Adeleye Adekunbi

PhD
Zolani Buba
Uchuchu Chukwuechefu
Ngaya Munuo
Ephraim Kluk
Imke Vonalt
Ethel Walt
Daniel McLaren

2012 Medallists

Commercial Transactions Law:	Katherine Rosholt
Administrative Law:	Meghan Finn
Evidence:	Katherine Rosholt
African Customary Law:	Sandhya Naidoo
Jurisprudence:	Douglas Ainslie
Private Law (John Kotze medal):	Meghan Finn
Corporation Law:	Michalis Michaelides
Commercial Transactions Law:	Katherine Rosholt
Constitutional Law:	Lauren Midgley
International Law:	Ryan Grunder
Interpretation of Statutes:	Jasmine Coyle
Criminal Law:	Carina Auret
Criminal Procedure:	Sian van der Weele
Administrative Law:	Meghan Finn
Evidence:	Katherine Rosholt
Law of Persons & Marriage:	Jonathan Hock
Foundations of SA Law:	Sian Fagan
Comparative Legal History:	Mary Jiyani
Law of Property:	Stephanie Craig
Law of Succession:	Kelly Armstrong
Law of Delict:	Daniella Lupini
Law of Contract:	Jasmine Coyle
Civil Procedure:	Samantha Smith
African Customary Law:	Sandhya Naidoo
Jurisprudence:	Douglas Ainslie

LLM/MPhil with distinction

2012

Keri Lynn Ellis (Human Rights)

Kaylan Nhan Massie (Private Law)

Julia Moore (Tax Law)

June 2013

Beverley Townsend (Biotechnology, Ethics and Law)

Lauren Kohn (Constitutional and Administrative Law)

Ophrah Kamanga (Criminal Justice)

Christopher Brown (Public Law)

Fatima Osman (Public Law)

2012 Prizes

FINAL YEAR

Bowman Gilfillan prize
Highest marks in Revenue Law
Wendy Hoffman

DB Molteno prize
Highest marks in courses in Public Law
Meghan Finn

Dean's award for service
In recognition of student service to the wider community
Liat Davis
Sarah Jackson
Lauren Midgley

Gering and Ina Ackermann prizes
Best student in Commercial Transactions Law
Katherine Rosholt

Judge Schock & Juta Law prizes
Best Final Level LLB student
Katherine Rosholt

Solly Kessler memorial prize
Best essay on a topic concerning constitutional law
Sbongile Mdluli

SA Society for Labour Law prize
Highest marks in Labour Law
Lana Jacobs

Spoor and Fisher prizes
Best student in Intellectual Property Law
Katherine Peter

Best article accepted for publication in *Responsa Meridiana*
Soseipriala Amabeoku

INTERMEDIATE LEVEL

Bisset Boehmke & McBlain 150th award
Academic achievement, financial need and passion for the law and social justice
Safura Abdool Karim

Blumberg prize
For the student who has worked hard both academically and in service of the wider student community
Wajdah Fataar

Brink Cohen le Roux Inc. prize
Highest marks in Law of Contract
Jasmine Coyle

Ionann scholarship
Top black female student in Criminal Justice courses
Seema Lalloo

LexisNexis Butterworths prizes
Best Intermediate Level student
Jasmine Coyle
Highest overall marks in Civil Procedure
Samantha Smith

Mike Blackman memorial prize
Best results in Corporation Law
Michalis Michaelides

Tom W Price memorial prize
Highest overall marks in Private Law
Jasmine Coyle

PRELIMINARY LEVEL

Adams and Adams prize
Best Academic Development Programme student
Isaac Maragele

Ben Beinart memorial prize
Best student in Comparative Legal History and Foundations of South African Law
Sian Fagan

Cliffe Dekker Hofmeyr prize
Best Preliminary Level student
Lauren Midgley

Eversheds prize for Property law
Best student in the Law of Property
Stephanie Craig

Sir Franklin Berman prize
Highest marks in International Law
Ryan Grunder

Soraya Donnelly Technology award
A deserving student of International Law
Julia Kaplan

Yash Ghai prize
Best student in Constitutional Law
Lauren Midgley

OTHER PRIZES

Bar Council Moot prize
Best student participating in a series of moots
Duncan O' Regan

Captain Bob Deacon Memorial prize
Highest marks in Shipping Law courses
Jani Calitz

David Potts prize
Best essay on a topic concerning Delict/Torts in cyberspace
Robin Richardson

Dean's award
Best Academic Development Programme student
Nandi Maesela

Engen Petroleum prize
Best combined results in the Marine Law courses
Abisai Konstantinus

Rodman Ward prize
Best essay on an aspect of Corporate Governance
Hilah Laskov

ALUMNI UPDATE

Reunion Luncheon

December 19th was another really good alumni event. The VC set the upbeat tone; Law's newest Honorary Doctor of Laws, Fink Haysom, gave an address that was a veritable tour de force; the sun streamed through Smuts Hall's stained glass windows; and there was the usual raucous reminiscing led primarily by the 1992 contingent, but followed closely by those from '52 to 2002, as always, pictures are worth a thousand words.

James Pitman

Brendan Manca

Alison Tooley, Bronwen Norman & Johnny Spears

Joy Wilkin & Allison Alexander

Elias Shikongo, Nate Ndauendapo & Kate O' Regan


Kate Berrisford & Ruth Faragher


Cathi & Graham


Michael & Hamilton


Mark, Andrew & Tracy


Irene Mendeli

A most moving day

Daniel Mackintosh

Often, working at the Constitutional Court is about paper, lawyers and arguments: many lawyers, complex arguments and small hills of paper that seem to sprout lives of their own in my office. But sometimes, I catch a glimpse of what the Court means to ordinary people. Today (9 October 2012) was a busy day - we handed down three important judgments. One of them was written by my Judge, Children's Institute, concerning the power that a High Court has to allow an amicus curiae to adduce evidence (and just to shamelessly admit how proud I am, there was a consensus that it was the Court's fastest judgment from the date of hearing to hand down). Another case, Ambrosini, was about the power of an individual Member of Parliament to introduce Bills into the National Assembly.

But during the hand-down of Schubart Park, the Courtroom was transformed from its traditional role of being a legal battleground. It became a place where people literally had their dignity recognised and their rights protected. Schubart Park involved 700 people who lived in a residential complex but had been removed from their homes by the City of Tshwane. They found themselves on the streets or in temporary shelter. Froneman J, writing for a unanimous court, found that the residents were entitled to return to their homes as soon as it was safe enough to do so. The Court found that the residents were entitled to occupation of their homes as soon as reasonably possible www.saflii.org.za/za/cases/ ZACC/ 2012/26.html.

But it was not the outcome that moved me. I was watching one of the residents who had come to the Court to hear the outcome. He was wearing a red t-shirt emblazoned with "Residents of Schubart Park" written on it so that we would all know that whatever the outcome read in Court that day, it would have a direct impact on his life. As Justice Nkabinde read out the hand-down note and it became apparent that he was going to be able to go back to his home, I watched him gradually sit up in his seat, smile, hold his head up a little higher. I looked at how his entire demeanour changed. It was the first time I really felt the importance of having a representative Court. Here was a man who felt that the Concourt was his Court – as if all that stuff we say when we take people on tours about the Court protecting the people and the people protecting the Court was actually true. I was watching it play itself out. Here was a man who looked as if his dignity was recognised merely by the words coming out of Justice Nkabinde's mouth.

Once the hand-down note was read, Deputy Chief Justice Moseneke then translated the outcome of the judgment into Tswana, the language spoken by most of the Schubart Park residents. It was at that point that most people really understood that they were going home. And people burst into tears as they realised that they would no longer have to endure further months of insecurity and terrible hardship on the streets of Tshwane. The entire group then moved out of the Courtroom, and exploded into joyous song. And all because we have a little book, of a few hundred pages, called the Constitution.

Today was living proof that sometimes, the mountains of paper really do make a difference to people's lives.

Congratulations to Daniel for winning the 2012 Ismail Mahomed essay prize, Editor.

ALUMNI IN THE NEWS

Active in Uganda: Livingstone Sewanyana (second from right), a PhD student of Professors Chirwa and Corder

Global player: Ezra Davids, (1992), and current Chair of the Law Endowment Advisory Board

Blue 'economists'

The first expert symposium on illegal fishing in southern African waters and beyond was held at UCT in July and presenting at the seminar were not one but FOUR UCT alumni.

Eve de Coning (2004, and pictured here with Jan Glazewski) works with Interpol in Lyon and spoke to the estimated R230 billion that is lost annually worldwide to illegal fishing. Professor Jan Glazewski (1976) was the co-convenor of the symposium. Emma Witbooi (1997) spoke to profits, plunder and flags of convenience. Professor Patrick Vranken (LLM) looked at Africa's Integrated Maritime Strategy. Fish provides food for 200 million Africans and employment for 100 million – a veritable 'Blue Economy,' that is severely under threat.

POSTCARDS FROM AFAR

Across the Liesbeeck

Pamhidzai Bamu, LLB, LLM and PhD (2011)

After ten years at Kramer, I felt I needed to expand my horizons and go somewhere new. In the end, this entailed taking up a Post Doctoral Fellowship at Stellenbosch University just across the Liesbeeck! My time at the Law Faculty has been an eye-opening experience, and I have grown a lot in my time here.

I have benefitted from the encouragement from colleagues who are very supportive of my work. I am pleased that we also have a female Dean, Professor Sonja Human, who took over at the beginning of 2013. Incidentally, she taught my class Law of Persons and Family in 2001 while Prof Himonga was on sabbatical. I am really excited to have been selected for the 2013 Harvard-Stanford International Junior Faculty Forum in October. My paper entitled "'I take goods across the border for a living': An analysis of Zimbabwe's informal cross-border traders and cross-border couriers" was one of only ten papers chosen.

I am honoured to have been chosen and will be flying the flag for Africa, Stellenbosch University and (of course) my

American letter

Shingi Masanzu (2008)

I met Professor Dirk van Zyl Smit in August 2012 at an NYU Law function. He left UCT before I started in the Law Faculty so I didn't know him other than by name, but he was kind enough to come and introduce himself to me and tell me a bit about himself and his time at UCT. Later on in the semester, he also gave a really fantastic and well attended talk to the African Law Society about criminal law in South Africa under the new constitutional dispensation. All to say, it's been really gratifying to see how far the UCT network extends (and how very highly regarded the personalities in that network are!). One doesn't really appreciate just how excellent the UCT Law Faculty is until one steps away from it a bit.

Doing my LL.M. at NYU was such a great experience and I'm very grateful for the training and foundation I got from UCT. Since graduation in May, I have done a bit of research work for NYU Law's Center for Constitutional Transitions. In September, I move to Washington D.C., where I'll be starting in the Legal Vice Presidency of the World Bank.

Greetings from Kansas

Kim Overdyck (2000)

The last two years have been spent at the University of Kansas, School of Law, where I was enrolled in the two- year JD program learn about the American legal system. I was provided with opportunities to master working with expert witnesses, taking depositions, and understanding the role of juries in a trial.

Cherry blossom, Kansas

Interning at the Innocence Project and Post-Conviction Remedies clinic and the Shawnee County Public Defenders office provided me with an in depth look into the American criminal justice system from the defendant's point of view. Graduation was on May 19 and I am now off to my next adventure!

London calling

Anisa Mahmoudi (2006)

Attending a world-renowned institution such as UCL comes with many a perk and one such perk was the numerous opportunities available to students to listen to talks on every possible discipline from lunchtime and evening lectures to colloquiums. Events beyond UCL included Law Society events on Human Rights in Iran and a seminar on Access to Justice in Iran held in the House of Commons.

On both occasions I was privileged to meet the UN Special Rapporteur on Human Rights in Iran who, together with other

Iran and international law, an issue close to my heart. For everything UCL has taught me, for everything UCT has taught me, I will be grateful. Part of the beauty of scholarships is the investment made in students who themselves will hopefully pay it forward. I know I most definitely will pay it forward, be it in the contribution I make in the advancement of human rights or in any other way.

Japanese experience

Jerry Mayaba (2001)

Nothing could have prepared me for the amazing experience that lay ahead in Japan – the land of the rising sun, jitensha (bikes), udon (noodles) and gohan (rice); an LL.M in International Business and Economic Law at Kyushu University turned out to be a most challenging and interesting stop.

I was the first South African and in fact the first African to be admitted to the UCT - Japan Leadership Programme and so I wore two caps at all times and even had to research other African countries because people expected answers from me. But it was all fun. It was also humbling and enlightening to be part of such a diverse group – thirteen judges, prosecutors and attorneys all with different backgrounds and beliefs.

Apart from always trying to defend your own country's law as best you could, we eventually came to the realisation that the prescripts of international law cut across all jurisdictions and apply irrespective of whether you have a common or civil law system.

WHAT A NETWORK!

Pauline Alexander

Students increasingly come to me with the words 'everyone says that you can help me', whereas it is *your* myriad and willing support that I know I can rely on.

Just this year, Daniel Mackintosh was a grateful recipient of warmth and wisdom from twenty or so alumni in London when he arrived there in February. UCT runs a series of recruitment events which have much more impact if recent graduates talk to *Law as a career;* this year Phillipa Farley (2006) took time out of her busy life as mom and IT teacher to join the UCT team in Pietermaritzburg and in past years Khanyi Buthelezi and Greg Palmer have done the same.

Vac work is always an issue for students and whenever we meet with law firms PJ puts in a plea for opportunities for vac work. I am so very grateful to the following firms, mostly leveraged though alumni, for giving 54 Intermediate students a short but well-orchestrated insight in to what lies ahead for them in the world of work – Adams and Adams, Bisset Boehmke and McBlain, Cliffe Dekker Hofmeyr, Gunstons, Modise Routledge,

And finally, your generosity to *Law 150* has transformed my role in the Faculty as much as it is playing its part in the larger transformation enterprise. When I came here in 2002 there were a handful of scholarships on offer. UK alumni set the ball rolling the next year with the IBA also supporting a couple of SADC students; there was the Beinart hardship fund to assist in dire circumstances and in 2007 several law firms came on board.

Now there is a fund the interest on which is spent not only to encourage top learners to study law and support deserving existing LLB students but also to undergird Masters and PhD study, including for staff, and including the new Research Commons. The Beinart Crisis Fund gives out dozens, literally, of meal tickets and when mid-year comes and the budget is spent, there are those among you to whom I can appeal and the response is always generous.

So thank you, thank you very much.

UCT graduates excel

The Cape Town School for Legal Practice, run jointly by the Law Society of South Africa (their Legal Education and Development division) and the UCT Law faculty, conducts an intensive six month practical legal training course. All LLB law graduates who undertake and successfully complete the course receive an accreditation of one year towards the compulsory period of articles as prescribed by the Attorneys Act.

The student intake at the School for Legal Practice generally is drawn from all three Western Cape law faculties but UCT LLB graduates have, over the 20 years since the school's inception, always performed well. In 2012, for example, seven out of nine UCT graduates attending the School received outstanding achievement certificates; congratulations go to Shaida Aghdasi, Mubeen Jaffer, Moran Lie-Paz, Adrienne Brophy, Nathaneal Mauritz, Tarryn-Leigh Tennant and Stephan Viollier. Shaida was top student with a course average of 82%, and 100% for the subject Will Estates and Trusts while Mubeen received the outstanding achievement award & obtained 100% for the subjects Attorneys Bookkeeping & Commercial Contracts, respectively.

In 2013, all four UCT LLBs received outstanding achievement certificates – congratulations go to Wendy Hoffman, Mashooma Parker, Angelo Pecego and Katherine Peter. Angelo was top student (course average of 82%) while Mashooma came 2nd in the Module 3 National Commercial prize and Katherine obtained 100% for Attorneys Bookkeeping. 'In successive seasons our top overall student has been a UCT LLB graduate; they not only excel academically but stand out in leadership roles and mock trial performances,' comments director Gail Kemp.

'This undoubtedly reflects the calibre of the teaching and the content of their LLB degree.'

Gail Kemp (1990) is the current director of the School for Legal Practice

We Remember

MICK (JLR) DOWER (1960)

John Winter, October 2011

The name Mick Dower is known world-wide because it was he who produced a Colour Chart for Clivias. His chart is used now all over the world and is a testament to his commitment to accuracy and improvement of judging criteria for Clivias.

Mick was a networker par excellence, always sourcing new plants in exchange for some of his choice specimens. His breeding programme focused on understanding the genetics involved in producing plants with new colours and with short, broad leaves.

Overall, Mick will be remembered for his generosity and the sharing of his knowledge with others. His brilliant brain was constantly ticking over with new ideas and plans, occasionally locking horns with other growers. Only the best, most honest and straightforward way was good enough for him.

NORMAN SNITCHER (1956)

Jeremy Tyfield, June 2013

Norman Snitcher, who died on 10 June 2013, just short of his 80th birthday, attended SACS and then studied law at UCT.

He was articled to his late father, Theo (older brother of Harry), and practised as an attorney for over 50 years until his death. He was highly regarded by his colleagues as an attorney of integrity and enormous ability. In his specialised area of criminal law, he was considered the doyen by his colleagues, magistrates, prosecutors, policemen and clients across the entire spectrum of our community. A compassionate man, he felt it was his duty to assist everyone who sought his help.

CLEM DRUKER (1959)

Mervyn Smith, June 2013

There is no doubt that it was cricket that gripped his whole-hearted interest. He pioneered floodlight cricket in the Western Cape and perhaps even in South Africa. He became president of the Western Province Cricket Union and when his time in cricket was over, he moved into the Law Society of the Cape with equal facility. Elected a Councillor in 2001, he served as such until last year.

Clem had a very distinct personality. He was a team player – yes; did he have a different viewpoint – often; was he ever an outsider - never. What he did possess, in enormous abundance, was style. Some examples: I can recall how he wore his Cartier watch above his wrist, how he drove a Mustang and other sports cars, how the Mount Nelson was the preferred place for drinks and how cream should be taken with coffee rather than milk.

Clem had an expression, YOLO. YOLO, which is an acronym for “you only live once”. Clem took his own advice and he lived a full life. Clem was one of a kind.

Have the last word...

If you have moved, please let us know and not just your new details, but also something of what you are doing.

If you have enjoyed this edition of Law Review, let us know and if you haven't, tell us why not.

If you have any questions about anything at all, send them in and we will endeavor to answer them.

alumni-law@uct.ac.za

The year in review

Ranked in top 100 world-wide

A dozen new titles

Law 150 meets its targets

In Memoriam: Justice Langa

Mandela, the lawyer: Corder & Jowell

A quintet of Staff PhDs

Professional Masters on the cards

Law in Society foregrounded

Inaugural Africa Sino Deans' meeting

Guest lecturers a continuing privilege

Youth in Africa - focussed and fun

Africa, comparative and interactive


University of Cape Town • iYunivesithi yaseKapa • Universiteit van Kaapstad
SPES BONA
tdharry 14143